# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

## No. [redacted] 204

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED, PLAINTIFF IN ERROR,

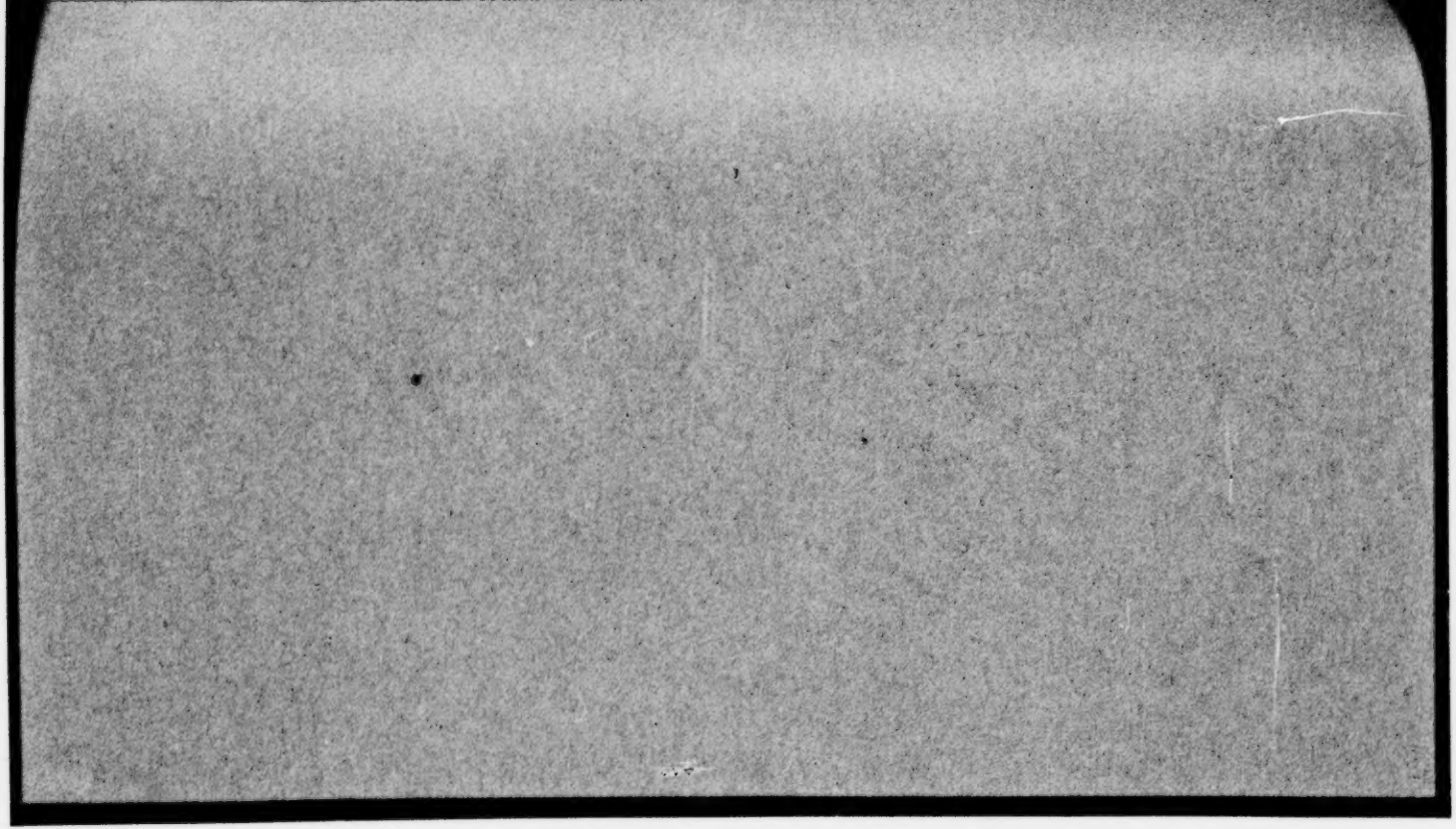
vs.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL EXHIBITION COMPANY, THE BROOKLYN BALL CLUB, ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 18, 1921.

(28,047)



# (28,047)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1920.**

# No. 690.

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THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED, PLAINTIFF IN ERROR,

*vs.*

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL EXHIBITION COMPANY, THE BROOKLYN BALL CLUB, ET AL.

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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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## INDEX.


| | Page. |
|---|---|
| Transcript of record from the supreme court of the District of Columbia. | 1 |
| Caption | 1 |
| Declaration | 2 |
| Plea of the American League of Professional Base Ball Clubs and others | 60 |
| Plea of the National League of Professional Base Ball Clubs and others | 61 |
| Joinder of issue on plea of the American League of Professional Base Ball Clubs and others | 61 |
| Joinder of issue on plea of the National League of Professional Base Ball Clubs and others | 61 |
| Memorandum: Verdict for plaintiff for $80,000.00 | 62 |
| Motion for leave to amend "record" overruled; exception noted; motion for new trial overruled; motion for judgment granted | 62 |
| Judgment; exception and appeal noted | 63 |
| Memorandum: Supersedeas bond approved and filed | 63 |
| Order fixing cost bond with leave to deposit $50 in lieu thereof | 63 |


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Page.

Memoranda: $50 deposited in lieu of appeal bond; time to submit bill of exceptions extended; notice to attorneys for plaintiff of time of submission of bill of exceptions; time to submit bill of exceptions extended ..... 63
Time to submit bill of exceptions extended ..... 63
Assignments of error ..... 64
Designation of record ..... 72
Order submitting and making bill of exceptions part of record ..... 73
Clerk's certificate ..... 74
Bill of exceptions ..... 74
Testimony of L. Edwin Goldman ..... 74
Certificate of incorporation of the Federal Baseball Club of Baltimore, Inc ..... 75
Articles of association of the Federal League of Professional Base Ball Clubs ..... 78
National agreement ..... 84
Agreement of January 6, 1914 ..... 103
Testimony of L. Edwin Goldman (continued) ..... 106
Regular contract ..... 107
Plaintiff's Exhibit No. 10 ..... 153
Franchise ..... 157
By-laws of the Federal League of Professional Base Ball Clubs ..... 164
Memo. of agreement, December 13, 1915 ..... 169
Peace agreement ..... 170
Testimony of James M. Walsh ..... 177
George John Maisel ..... 186
John G. Priest ..... 188
David L. Fultz ..... 190
Robert Garrett ..... 199
Carrol W. Rasin ..... 200
Phillip L. Poe ..... 208
Ellis Nordlinger ..... 209
Harry W. Neepier ..... 209
Leonard H. Weil ..... 209
John J. Fahey ..... 211
Otto G. Simonson ..... 212
Edward Hanlon ..... 214
Harry H. Mowrey ..... 224
Clarence Dixon Russell ..... 226
David Landreth ..... 223
Edwin W. Poe ..... 227
George Schlewnes ..... 227
Federal League settlement ..... 228
Order dismissing equity suit before Judge Landis ..... 229
Constitution of American League ..... 230
Constitution of National League ..... 243
Contract between Western Union Telegraph Co. and National League, dated March 19, 1913 ..... 262
Contract between A. G. Spaulding & Bros. and the National League ..... 265

Page.
Contract between A. J. Reach Co. and the American League... 267
Thirteenth annual report of the National Commission for 1917. 270
Testimony of Major Stuart S. Janney..... 300
Testimony of Robert C. Morrow..... 335
Stipulation ..... 336
Testimony of James Gilmore..... 338
William B. Ward..... 386
August Herrmann..... 394
Defendants' Exhibit 1..... 406
Testimony of Cornelius McGillicuddy..... 437
Testimony of Byron Bancroft Johnson..... 440
Letter of June 15, 1917, Chester N. Farr to F. P. Pritchard *et al*..... 465
Offer of stenographic minutes..... 466
Statement of operating receipts and expenses..... 468
Testimony of Edward Hanlon..... 470
Testimony of C. W. Rasin (recalled)..... 475
Assignment of March 4, 1914, Federal Baseball Club of Baltimore to Federal League..... 477
Testimony of C. W. Rasin (continued)..... 477
Exhibits 37 to 43—Correspondence..... 479
Letter, C. N. Farr *et al.* to G. W. Pepper, June 18, 1917..... 485
Letter, Pepper to Farr, June 19, 1917..... 486
Motion for verdict..... 487
Plaintiff's prayers..... 487
Defendants' prayers..... 489
Charge to jury..... 493
Exceptions to charge..... 502
Motion for new trial filed and overruled..... 503
Minute entry of argument..... 504
Opinion, Smyth, C. J..... 504
Judgment, December 6, 1920..... 510
Petition for rehearing..... 511
Petition to stay mandate..... 513
Suggestions of plaintiff in error..... 514
Memorandum opinion, Smyth, C. J., on petition for rehearing..... 515
Judgment, January 3, 1921..... 515
Petition for writ of error..... 516
Assignments of error..... 517
Order allowing writ of error..... 518
Writ of error..... 519
Bond on writ of error..... 519
Citation and service..... 521
Designation of record on writ of error by appellants..... 521
Clerk's certificate..... 522

# Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS et al.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

a Supreme Court of the District of Columbia.

At Law. No. 60643.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.
Plaintiff,

vs.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL Exhibition Company (of New York), The Brooklyn Ball Club, The Philadelphia Ball Company, The Boston National League Baseball Company, The Chicago League Ball Club, American Baseball & Athletic Exhibition Company of St. Louis, Missouri; The Pittsburg Athletic Company, The Cincinnati Exhibition Company, The American League of Professional Baseball Clubs, The Greater New York Baseball Association, The Boston American League Baseball Club, American Baseball Club of Philadelphia, The Washington-American League Baseball Club, American League Baseball Club of Chicago, The St. Louis American League Baseball Company, The Detroit Baseball Company, The Cleveland Ball Club Company, August Herrmann, Bancroft B. Johnson and John K. Tener, James A. Gilmore, Charles E. Weeghman and Harry Sinclair, Defendants.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia.

At Law. No. 60653.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED, Plaintiff,

vs.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL Exhibition Company (of New York), The Brooklyn Ball Club, The Philadelphia Ball Company, The Boston National League Baseball Company, The Chicago League Ball Club, American Baseball & Athletic Exhibition Company of St. Louis, Missouri; The Pittsburg Athletic Company, The Cincinnati Exhibition Company, The American League of Professional Baseball Clubs, The Greater New York Baseball Association, The Boston American League Baseball Club, American Baseball Club of Philadelphia, The Washington-American League Baseball Club, American League Baseball Club of Chicago, The St. Louis American League Baseball Company, The Detroit Baseball Company, The Cleveland Ball Club Company, August Herrmann, Bancroft B. Johnson and John K. Tener, James A. Gilmore, Charles E. Weeghman and Harry Sinclair, Defendants.

*Declaration.*

Filed September 20, 1917.

The plaintiff, The Federal Baseball Club of Baltimore, Inc., by Charles A. Douglas, Stuart S. Janney, L. Edwin Goldman and Marbury, Gosnell & Williams, its attorneys, sues The National League of Professional Baseball Clubs, National Exhibition Company (of New York), the Brooklyn Ball Club, the Philadelphia Ball Company, the Boston National League Baseball Company, the Chicago League Ball Club, American Baseball and Athletic Exhibition Company of St. Louis, Missouri; the Pittsburg Athletic Company, the Cincinnati Exhibition Company, the American League of
2 Professional Baseball Clubs, the Greater New York Baseball Association, the Boston American League Baseball Club, American Baseball Club of Philadelphia, the Washington American League Baseball Club, American League Baseball Club of Chicago, the St. Louis American League Baseball Company, the Detroit Baseball Company, the Cleveland Ball Club Company, August Herrmann, Bancroft B. Johnson and John K. Tener, James A. Gilmore, Charles E. Weeghman and Harry Sinclair, defendants, for that—

*First Count.*

The plaintiff, The Federal Baseball Club of Baltimore, Incorporated, is a corporation organized and existing under and by virtue

of the laws of the State of Maryland, with its principal office located in the City of Baltimore, in said State; that it is so organized and exists for the purpose of engaging in the business of giving exhibitions of baseball for compensation, as hereinafter set forth.

That the defendant, The National League of Professional Baseball Clubs, hereinafter referred to as "The National League," is an unincorporated voluntary association, with its principal office located in the City of New York, in the State of New York, and a resident and citizen of said State; that John K. Tener is the President thereof; that said association is organized and exists for the purpose of engaging in the business of baseball, as hereinafter set forth; and, that said association transacts, and for a long time past has continued to transact, the business of its constituent members, hereinafter specified, so far as such business affects said constituent members as a whole, and not as individual corporations.

That the National League derives an income from the business of baseball in the way specified in its fundamental law and constitution in words and figures as follows, that is to say:

"Sec. 11. The revenue of the League shall be derived from the following sources:

3 (*a*) The balance, if any remaining in the treasury on the 31st day of December of each year.

(*b*) Annual dues to be paid on or before the first day of April of each year by each club to the Secretary, in the sum of $100.00.

(*c*) Fines and penalties inflicted either by the League, the Board of Directors, or the President against a club, club officer, manager, player, or upon any other person in accordance with the provisions of the Constitution and the Playing Rules of the League.

(*d*) The proceeds of the sale of baseballs by the League to its clubs under the contract entered into between the League and A. G. Spalding & Bros.

(*e*) The amount received by the League under the contract entered into with A. G. Spalding & Bros.

(*f*) Interest on deposits.

(*g*) Income from all other sources.

(*h*) The amount received by the League under the provisions of Section 17 of the Rules and Regulations governing the playing of the World's Series games during each year."

That in addition to said enumerated sources of revenue, the National League has heretofore received, during the existence of its organization, and has a contract right hereafter to receive, a percentage of all gross sums obtained by its constituent members from admissions paid by the public for the privilege of witnessing baseball exhibitions given by such members at their several parks. That The National League has from time to time, levied upon and collected from its constituent members assessments to meet and defray its expenditures, but that since the termination of the competition hereinafter referred to as having formerly existed between The National League and The American Association, no deficit has existed, but large profits have accrued to said National League.

That the defendants, National Exhibition Company, which is a corporation organized and existing under and by virtue of the Laws

of the State of New York, with its principal office located in the City of New York, in said State; the Brooklyn Ball Club, which is
4 a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of Brooklyn, in said State, the Philadelphia Ball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Philadelphia, in said State; the Boston National League Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office located in the city of Boston, in said State; the Chicago League Ball Club, which is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located in the City of Chicago, in said State; American Baseball and Athletic Exhibition Company of St. Louis, Missouri, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located in the City of St. Louis, in said State; the Pittsburg Athletic Company, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Pittsburgh, in said State; and the Cincinnati Exhibition Company, which is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office located in the City of Cincinnati, in said State, are each and every of them organized for the purpose of and are actually engaged in the business of baseball; that said corporate defendants compose the club organization of the National League, as the same is generally and popularly known, and said cities of New York, Brooklyn, Philadelphia, Boston, Chicago, St. Louis, Pittsburgh and Cincinnati form the baseball circuit of said The National League.

That the defendants, The American League of Professional Baseball Clubs, hereinafter referred to as "The American League," is an unincorporated voluntary association, with its principal office
5 located in the City of Chicago, State of Illinois, and a resident and citizen of said State; that Bancroft B. Johnson is President thereof; that said Association is organized and exists for substantially the same purpose and performs substantally the same business functions as those performed by the defendant, The National League.

That The American League derives an income from the business of baseball in manner as specified in its fundamental law or constitution, which said fundamental law or constitution is substantially the same as that hereinbefore set forth with respect to The National League; that in addition to said enumerated sources of revenue, The American League has heretofore received during the existence of its organization, and *have* a contract right hereafter and for a period of years to receive, a percentage of all gross sums obtained by its constituent members from admissions paid by the public for the privilege of witnessing baseball exhibitions given by said members at their several parks. That The American League has from time to time as a matter of practise, levied upon and collected from its constituent members assessments to meet and defray its expenditures, but that

since the termination of the competition, hereinafter referred to as having existed between The National League and The American Association, no deficit has existed, but large profits have accrued to said American League.

That the defendants, the Greater New York Baseball Association, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of New York, in said State; the Boston American League Baseball Club, which is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office located in the City of Boston, in said State; American Baseball Club of Philadelphia, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania,
6 with its principal office located in the City of Philadelphia, in said State; the Washington American League Baseball Club, which is a corporation organized and existing under and by virtue of the laws of the District of Columbia, with its principal office located in the City of Washington, in said District; American League Baseball Club of Chicago, which is a corporation organized and existing under and by virtue of the Laws of the State of Illinois, with its principal office located in the City of Chicago, in said State; the St. Louis American League Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located in the City of St. Louis, in said State; the Detroit Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office located in the City of Detroit, in said State; and the Cleveland Ball Club Company, which is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office located in the City of Cleveland, in said State, are each and every of them organized for the purpose of and are actually engaged in the business of baseball; that said corporate defendants compose the club organization of The American League, as the same is generally and popularly known, and the said cities of New York, Boston, Philadelphia, Washington, Chicago, St. Louis, Detroit and Cleveland form the Baseball circuit of said The American League.

That the defendant, August Herrmann, is a resident and citizen of the City of Cincinnati, in the State of Ohio, is President of said The Cincinnati Exhibition Company and is also Chairman of The National Commission, so-called, hereinafter more particularly referred to; that the other members of The National Commission, who are hereby made parties defendant, are Bancroft B. Johnson and John K. Tener; that said Johnson is a resident and citizen of the City of Chicago, in the State of Illinois; that said Tener is a resident and
7 citizen of the City of Philadelphia, in the State of Pennsylvania; that the defendant, James A. Gilmore, is a resident of the City of Chicago, in the State of Illinois, and a citizen of said State; that the defendant, Harry Sinclair, is a resident of Tulsa, in the State of Oklahoma, and a citizen of said State, and the defendant, Charles E. Weeghman, is a resident of Chicago, in the State of Illinois, and a citizen of said State.

That the defendant corporations and the said National League and the said American League, and the said members of the National Commission, are engaged in the business of giving exhibitions of the games of baseball for profit in and among the various States of the United States, as hereinafter set forth, which business is essentially and fundamentally commerce among the several States.

That the defendants and each of them have entered into a contract or contracts, combination in the form of trust or otherwise, or conspiracy, as hereinafter set forth in restraint of trade or commerce among the several States, and through such contract or contracts, combination in the form of trust or otherwise, or conspiracy, have caused damage to the plaintiff in the conduct of its business, which is likewise essentially interstate commerce as hereinafter set forth, all of which is in violation of the terms of the Act of Congress of the United States of July 2, 1890, Chapter 647, known as the "Sherman Anti-Trust Act," and likewise in violation of the Act of Congress of October 15, 1914, Chapter 232, known as the "Clayton Anti-Trust Act."

That the defendants and each of them have monopolized or attempted to monopolize, or have combined or conspired with each other to monopolize a part of the trade or commerce among the several States as hereinafter set forth, and through such monopoly or attempt at monopoly or combination or conspiracy, have caused grave damage to the plaintiff in the conduct of its business, which is likewise essentially interstate commerce, as hereinafter set forth, in violation of the terms of the Act of Congress of the United
8 States of July 2, 1890, Chapter 648, known as the "Sherman Anti-Trust Act," and likewise in violation of the Act of Congress of October 15, 1914, Chapter 232, known as the "Clayton Anti-Trust Act."

That the plaintiff is a resident and citizen of the City of Baltimore, and State of Maryland; that the said several constituent members of The National League and The American League, respectively, are each residents of the cities and States in which their respective principal offices are located, as hereinbefore alleged; and are each citizens of the several States of their respective incorporations, as hereinbefore alleged; and that the amount involved in this controversy, exclusive of costs and interest, exceeds the sum of three thousand ($3,000) dollars.

That the business of baseball as conducted by each of the Leagues above named, and by each and every of the constituent members thereof, respectively, consists in the giving of baseball exhibitions to the public in and among the several States of the United States for admission fees charged to and collected from the public therefor; that said exhibitions are given by two teams representing different cities in said circuits, contesting with each other; that each individual contest is a part of a prearranged schedule according to which each club is provided to play with every other club of the League of which it is a member an equal number of games, the admission fees, after first deducting and paying the respective Leagues, of which they are members, a fixed percentage thereof, being divided

between the contesting clubs at the close of each game according to a fixed agreement made in advance of each season; that such schedule is strictly pursued except so far as the same may be interfered with by condition of weather and other casualties; that such schedule is prepared and controlled by the officers of the several Leagues, and is mailed by them through the United States mail to all newspapers of importance in all of the cities of the United States, and is advertised by the officers of the constituent members thereof in and
9 among the several States, and is performed under the supervision of the officers of the two Leagues, aforesaid, subject to the domination and control of The National Agreement, the Rules and Regulations of the National Commission, and the National Commission, hereinafter referred to, and all of said officers of the several Leagues, receive compensation for their services rendered in that and other connections, and, among other things, employ, pay and control umpires, who direct and govern each of the individual games in the several States, which said umpires, as well as said teams, travel from city to city and from State to State, the said teams for the purposes of contesting, as aforesaid, and the said umpires for the purpose of directing and governing said contests, as aforesaid; that records of the victories and defeats of each club in said respective Leagues are kept by the officers of each League and at or soon after the close of each playing season (which playing season customarily begins early in April, and terminates early in October of each year) an emblem of championship is awarded in each League by the officers of each League to that particular club thereof which has obtained the largest percentage of victories over defeats; that a baseball team consists of nine (9) regular players besides substitutes, each of whom plays in different positions, to wit: Pitcher, catcher, first base, second base, third base, shortstop, rightfield, centerfield and leftfield, each of which positions requires special and peculiar talents, training and qualifications for the expert playing thereof; that the financial results obtained by the various members of the said two Leagues are affected not only by the positions which their Clubs from time to time may occupy in the race for the pennant, so-called, but also by the quality of the exhibitions which they offer to the public; that the expertness of a ball-player consists in the exercise of a high degree of skill which involves as well the dexterous use of the muscles as the quick and resourceful employment of the brain; that such expertness is only acquired by long practice and training; that there are now in the United States about ten thousand professional baseball players of varying degrees of expertness,

10 That prior to the organization of The Federal League, hereinafter described, all of said ball-players were under the domination and control of the National Agreement and the Rules and Regulations of the National Commission and the National Commission as hereinafter alleged, and were in the service of The National League, The American League and the various minor Leagues, hereinafter referred to, all operating under the National Agreement and the Rules and Regulations of the National Commission, hereinafter referred to, and under the domination and control of said Na-

tional Commission; that said Leagues and their constituent clubs or members so operating and so dominated and controlled compose what is popularly known and designated as "Organized Baseball," and are hereinafter thus referred to in this declaration; that as the ball-players in the two Major Leagues, defendants herein, lose their special fitness and unique and extraordinary skill by virtue of age, or other causes, their places are required to be filled; that the only source from which such constantly recurring new demands may be supplied is from the ranks of said minor leagues, or from and among amateur baseball players; that the degree of expertness of amateur baseball players is rarely, if ever, adequate to meet the standards and requirements of major league clubs.

That heretofore, during the existence of the National Agreement and the Rules and Regulations of the National Commission, and now, said National, American and minor leagues have claimed and asserted the absolute right and title to all baseball players in their ranks, and have heretofore claimed and now claim that once a baseball player is employed by any club operating under the National Agreement and the Rules and Regulations of the National Commission, such player always continues to be subject to the demands of the various clubs operating under the National Agreement and the Rules and Regulations of the National Commission, and is at no time and under no circumstances entitled to contract with any club
11 not operating under the National Agreement, and the Rules and Regulations of the National Commission, except when all of the clubs so operating have indicated that they no longer desire the services of such player, all of which claims, among other ways and means, are enforced and accomplished by and through the instrumentalities of the National Agreement, the Rules and Regulations of the National Commission, and said National Commission, hereinafter referred to, and to which all of the constituent members of The National League, The American League and the minor leagues are, through their various officers, parties, and are controlled thereby; that said claims are, also among other ways, enforced and accomplished through the so-called reservation lists caused to be maintained by said National Agreement, the Rules and Regulations of the National Commission, and the National Commission, as well as by the maintenance of black-lists, and by means of threats and intimidations.

That in addition to the provisions of said National Agreement, the constitution or fundamental law of The National League provides as follows:

"Each club of this League shall be entitled to the right of reservation. On or before the 28th day of September in each year each club shall transmit to the Secretary a list of all players under contract on that day, which such club desires to retain for the following season, together with those secured for future service by purchase or draft or while free agents, and those under suspension for insubordination or other causes as well as those ineligible for refusal to respect reservation by, or contract with, such club for that or a preced-

ing season, or for any other valid reason. Such players shall be ineligible to contract with any other club in this League."

That in and by said constitution or fundamental law of The National League, it is further provided in Section 33 thereof, as follows:

"A player shall not enter into negotiations with any other
12 club for services without the consent of the club — which he is under contract or reservation, nor shall any representative, manager, or agent of any club negotiate for the services of a player of another club without the consent of the club having title to the player's services."

And the plaintiff further alleges that the constitution or fundamental law of The American League is to all intents and purposes substantially the same as that of The National League.

That the National League, in addition to the control conferred upon and exercised by it over the individual games of baseball, and the players engaged with its constituent members, defendants herein, is by its constitution or fundamental law given the exclusive control over the territory or franchise rights of the several clubs composing its circuit, except as such exclusive control is in turn dominated by the National Agreement and the Rules and Regulations of the National Commission and said National Commission. That said constitution or fundamental law, in Section 31 thereof, provides as follows:

"This League shall have exclusive control of each city in its circuit and of the surrounding territory to the extent of five miles in every direction from its corporate limits, unless such city be represented in the American League as well as the National League, in which event it shall be under the joint control of these Leagues. No outside National Agreement club shall be permitted to play exhibition games in such territory except with the consent of the local major league club or clubs located therein."

And the plaintiff further alleges the fact to be, that the constitution or fundamental law of The American League contains substantially the same provisions as that of The National League above set forth.

That the profits of the two defendant Leagues and of their constituent members are directly in proportion to the public interest they can arouse in the playing of their said schedules, and one essential factor in arousing such public interest and producing such profits is the competition in the playing of baseball between clubs located in different cities of large size and importance, and located in
13 different States, and in different sections of the United States, so that intercity, interstate and intersection competition is the very essence of the business of baseball as now conducted, and always heretofore conducted by the said defendants. That said exhibitions are conducted daily and contemporaneously in the cities constituting the circuits of the American League and of the National League during the playing season, in such manner that in each League each club plays half of its games at home on the grounds owned by it in the city of its residence, and half of its games abroad, an equal number of the games so played abroad being played in each of the other cities constituting the Circuit of the League to which

such club belongs; that it is of the essence of the business, and a necessary part of the business of all of the clubs constituting the two said defendant Leagues and of the two said Leagues, that the teams representing the constituent members of said Leagues consisting of from twenty to thirty players shall continually travel by rail back and forth between the said cities in different States of the United States.

That the various players so employed on said teams have contracts for their services, signed usually before the beginning of each baseball season, which, among other things obligate the members of said teams to travel from State to State during th eplaying season, in accordance with the requirements of the schedules of the two respective Leagues, and the officers of the said constituent members of the said respective Leagues are actively engaged during the entire playing season in arranging and providing for the transportation of said teams, together with their equipment and paraphernalia,—such as uniforms, bats and other appliances needed for the playing of baseball,—the entire cost of which transportation is borne by the Defendant Clubs, and in no part by the individual players, and said individual players are subject to the directions of the officers of said members of said Leagues as to the time and manner of their moving from city to city and State to State, and according to the terms of the National
14 Agreement the various defendant corporations, members of the said respective Leagues, are responsible to each other for the presence of their players, with their paraphernalia and equipment, at each city on the day and time appointed in the prearranged schedules hereinbefore referred to, and are subject to various and sundry fines and penalties for failure so to appear, and in the playing of said games in the two said major Leagues there are consumed a large number of baseballs, not less than 3,000 dozen, and the plaintiff further avers that the National League has entered into a contract whereby it purchases from A. G. Spalding and Bros., a corporation engaged in the manufacture of said article, all of the balls used by the clubs constituting the circuit of said National League, and sells the same at a profit to its constituent members and causes them to be shipped in interstate commerce to the said purchasers as and when required, and the said American League carries on for profit a substantially similar activity in the purchasing and shipment of balls to the constituent members of the said American League, and the purchase, sale and shipment in interstate commerce of the said articles is an essential part of the business of baseball and the profit realized therefrom constitutes a large and important part of the revenues of the said American and National Leagues.

That prior to the 11th day of September, 1903, the said defendant, The American League of Professional Baseball Players, existed under and was known by the name of The American Association of Professional Baseball Players, and was on said date, and had prior thereto been, engaged in the business of baseball with substantially the same individual owners as now own and control, and since said date have owned and controlled the majority of the stock of its several member clubs, with, however, a slightly different circuit of cities. That for a few years prior to said 11th day of September, 1903, the

said The American Association of Professional Baseball players had undertaken to compete with organized baseball as it then
15 existed; that Organized Baseball, as it existed on and prior to the 11th day of September, 1903, consisted of the defendant, The National League, and the other defendants now constituent members of said The National League, as hereinbefore alleged, and the various minor leagues now existing throughout the United States of America, except such of them as have since been formed in the United States of American, all of which new minor leagues did at the time of their organizations or creation come within the combination of Organized Baseball or have since the dates of their respective organization accepted the provisions of the said National Agreement and operated thereunder.

That on said 11th day of September, 1903, and prior thereto, Organized Baseball operated under a national agreement substantially in the same language and adopted for the same purposes as the National Agreement hereinafter more particularly referred to; that a few weeks prior to said 11th day of September, 1903, a combination was arranged between said The American Association of Professional Baseball Players and said Organized Baseball, and was consummated by said The American Association of Professional Baseball Players entering or being taken into the combination of Organized Baseball under its present style and name of The American League and the execution of the said National Agreement hereinafter referred to; that from said 11th day of September, 1903, down to the organization of The Federal League, on or about the first day of March, 1913, there existed in the United States of America substantially no league except those operating as constituent members of Organized Baseball under and in subordination to the terms of the National Agreement, the Rules and Regulations of the National Commission and said National Commission, hereinafter more particularly referred to.

That on said 11th day of September, 1903, the defendants, The National League and The American League and The National Association, which said National Association is hereinafter more
16 particularly referred to, described, made and entered into a certain instrument of writing styled by them and since known as "The National Agreement for the Government of Professional Baseball," which is expressly declared therein and claimed to be indissoluble; that a copy of the said the National Agreement is hereto annexed and made a part hereof as "Plaintiff's Exhibit A;" that the objects expressed in said the National Agreement are, for the most part, pretenses, shams, subterfuges and disguises; that the true objects of the said the National Agreement were, have always been and still are—

(*a*) The perpetuation of professional baseball in the hands of the contracting parties, to the end that those engaged in the business of professional baseball within the combination might be safeguarded in the respective localities in which they were doing business against any professional baseball competition therein;

(*b*) The protection of alleged property rights in the players then or who might subsequently be engaged by any of the contracting

parties, to the end that they might control the compensation to be paid to such players and might so dominate and control such players that the engagement of their services by any person or persons, corporation or corporations who might undertake to engage in the business of baseball without the combination would be difficult if not impossible.

That prior to the time of the organization of The Federal League, hereinafter set forth, there had for a long time existed in the United States of America two, and only two, major leagues for the carrying on of the business of baseball, to wit: The defendants, The National League and The American League; that said major leagues give their exhibitions in the larger cities of the several States of the United States; that said minor leagues give their exhibitions in the smaller cities of the several States of the United States; that an enumeration of said minor leagues, and the various clubs composing the same, is more fully set forth in the schedule hereto attached and made part hereof as "Plaintiff's Exhibit B."

17 That said The National Association is a voluntary unincorporated association which performs for all said minor leagues and clubs substantially the same business functions and services in substantially the same manner, and with an income derived from substantially the same character of sources, and for profit and compensation, as said National League and said American League in their respective spheres, but subject at all times to said National Agreement, the Rules and Regulations of said National Commission, and said National Commission itself.

That all of said baseball leagues and clubs operate and conduct their business under, pursuant and in subordination to said the National Agreement, the Rules and Regulations of the National Commission and said National Commission.

That on or about the 6th day of January, 1914, an organization known as the Baseball Players' Fraternity, composed wholly of baseball players under the domination of clubs of Organized Baseball, petitioned the National Commission for the correction of certain alleged abuses; that pursuant to said petition and after a hearing thereon, a modification, so-called, of said National Agreement was made by the said National Commission, which said modification is hereto attached and made a part hereof as "Plaintiff's Exhibit C;" that said National Agreement as so modified is the dominating and controlling instrument under which Organized Baseball operates at the present time and which agreement dominates and controls each and all of the defendants herein.

That pursuant to said National Agreement, said National Commission has heretofore been appointed and acted and is now appointed and acts; that pursuant to said National Agreement, said National Commission has adopted and from time to time does adopt Rules and Regulations which are as binding upon the constituent membership of Organized Baseball as said National Agreement itself; that a copy of said Rules and Regulations is hereto attached and made a part hereof as "Plaintiff's Exhibit D."

18 That said National Commission is the chief executive body of said Organized Baseball and is also the highest legislative body, as to whose law there is no veto, and the supreme judicial tribunal from whose decrees there is no appeal; that said National Commission is conducted for profit and derives an income from various sources, that is to say:

(*a*) From assessments which it is empowered to levy and to defray expenses.

(*b*) From fines imposed and collected pursuant to said National Agreement and said Rules and Regulations.

(*c*) From a percentage of gross receipts exacted by it for managing, directing and supplying the umpires for city series contests, for city championships, so-called, and alleged World's Series contests annually held between the winners of the pennants of said National and American Leagues.

That from the so-called World's Series contests, conducted under the auspices of said National Commission during the month of October, 1915, between the Philadelphia National League Club and the Boston American League Club, said National Commission received a sum of money in excess of Twenty-five thousand ($25,000.00) dollars, its share being ten per cent of the gross receipts of such series; and, that by virtue of said percentage of receipts received from said World's Series throughout a number of years, and by virtue of sums of money received from its other sources of revenue, said National Commission has not only been able to defray all of its current expenses for salaries and other incidentals, but has accumulated a large surplus, which said surplus, together with surpluses acquired by The National League and The American League, respectively, were used for the purpose of injuring or destroying the plaintiff, and for the further purpose of carrying into effect and keeping in force said illegal National Agreement; that said World's Series contests and each of them have been played pursuant to a schedule, and the contesting teams, with the umpires governing and directing said

19 contests, have traveled back and forth between the several cities represented by the respective contesting teams in the respective States of the United States.

That the defendants, and each of them, and The National Commission and its constituent members, and each of them, are at all times engaged in the buying, selling, exchanging, bartering and dealing in players, and in conveying said players by means of the instrumentalities of commerce between and among the several States; that the manner of transacting the business of buying, selling, exchanging, bartering and dealing in players is more fully defined in The National Agreement and the Rules and Regulations of The National Commission, and is especially supervised by said National Commission.

That said The National Agreement, said Rules and Regulations, said National Commission and said organized baseball, herein are each and every of them contrary to, and in violation of, the common law, and in contravention of the anti-trust and anti-monopoly statutes of the United States of America aforesaid; that the conduct of

said business under, pursuant and in subordination to the terms of said The National Agreement, Rules and Regulations of the National Commission and said National Commission is in like manner contrary to the common law and to said statute laws, creates a monopoly, or attempted monopoly, and represents and is a continuing contract, combination in the form of trust or otherwise or conspiracy directed alike against the public, the players required and employed in connection therewith and those undertaking to enter into the business of baseball independently of organized baseball, and especially this plaintiff, and is in restraint of the right of private contract; and that said unlawful contract, combination in the form of trust or otherwise, or conspiracy was designed to and does restrain trade and commerce in and among the several States.

That on or about the 1st day of March, 1913, The Federal League of Professional Baseball Clubs, a corporation organized and
20 existing under and by virtue of the laws of the State of Indiana, with its principal office located in the City of Indianapolis, hereinafter called "The Federal League," undertook to engage in the business of baseball; and pursuant to the plan of its incorporators, various constituent members of such Federal League were organized for the purpose of maintaining and operating separate corporations in each of the cities hereinafter set forth, for the purpose of engaging in baseball as a business, and obtaining the revenue to be obtained from admissions paid by the public for the privilege of witnessing baseball exhibitions given by its said constituent members.

That the Federal League Baseball Club of Brooklyn, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of Brooklyn, in said State; the Exposition Park Association, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Pittsburgh, in said State; the Buffalo Federal League Baseball Company, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of Buffalo, in said State; the Federal Baseball Club of Baltimore, Incorporated, the Plaintiff herein, and a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office located in the City of Baltimore, in said State; the St. Louis Federal League Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located at the City of St. Louis, in said State; the Federal Baseball Club of Indianapolis, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal office located at the City of Indianapolis, in said State; the Federal Baseball Company of Kansas City, which is a corporation organ-
21 ized and existing under and by virtue of the laws of the State of Missouri, with its principal office located at the City of Kansas City, in said State; the Chicago Federal League Baseball Club, a corporation organized and existing under and by virtue of the

laws of the State of Illinois, with its principal office located at the City of Chicago, in said State, were each and every of them organized for the purpose of engaging in the business of baseball, as constituent members of said Federal League, said corporations composing the club organization of the said Federal League as the same became generally and popularly known, and said cities of Brooklyn, Pittsburgh, Buffalo, Baltimore, St. Louis, Indianapolis, Kansas City and Chicago forming the baseball circuit of the said The Federal League; and, thereafter, to wit, prior to the playing season of 1915, the Federal Baseball Club of Indianapolis, Incorporated, sold its franchise, as a member of said Federal League, to a corporation organized under the laws of the State of New Jersey, known as the Federal Baseball Club of Newark, Incorporated, and said City of Newark did thereupon become one of the cities constituting the baseball circuit of said The Federal League in the place and stead of the said City of Indianapolis, as aforesaid.

That pursuant to its intentions to engage for profit in the business of conducting exhibitions of professional baseball, the various constituent members of the said The Federal League, including the plaintiff, did thereupon go into the market, and in competition with the defendant corporation did engage as its players more than three hundred men, having special aptitude or skill in the playing of baseball; and said group of players constituted the only players of professional baseball in the United States of America not under the dominion and control of the National Agreement, the Rules and Regulations of the National Commission and the National Commission. And, the said The Federal League constituted during the period of its existence the only organization carrying on any competition with the aforesaid National League and the American League and conducting contests independently thereof.

22 That immediately upon the entry of said The Federal League into the business of baseball, the defendants, representing organized baseball as an entirety, and particularly the defendants, Herrmann, Johnson and Tener, contracted, combined or conspired together, in violation of the statutes aforesaid and the common law, to injure or destroy the business of the said The Federal League, and of its constituent members, and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in baseball among the several States, and repeatedly announced publicly and privately, through the press and to individual players considering entering into contracts with the constituent members of the Federal League, that the said League and its constituent members were financially irresponsible and would not be able to perform their contracts, and would not be able to continue in the business for such length of time as to enable them to play out their schedules of games as a League of major importance; and the said defendants, or some of them, likewise threatened that any player who was or had ever been a member of any club in Organized Baseball, who should contract with any of the constituent members of The Federal League, including the plaintiff, should thereafter be barred from ever playing in Organized Baseball; that each and every of said statements,

and each and every of said threats were made for the purpose of harrassing and injury the plaintiff and the other constituent members of The Federal League, and for the further purpose of deterring the players within the combination of Organized Baseball from, at any time or under any circumstances, entering into contracts with the plaintiff, or any other of the constituent members of the said The Federal League; and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of The Federal League; and for the purpose, if possible, by such means of destroying the said The Federal League, and ruining its constituent members and thereby eliminating competition with said organized baseball.

23 That on or about the 5th day of January, in the year 1915, The Federal League of Professional Baseball Clubs, of which the Plaintiff was and is a constituent member, brought its Bill of Complaint, in the United States District Court for the Northern District of Illinois, Eastern Division, setting out substantially the matters and facts hereinabove set forth, and praying an injunction against the further prosecution of the illegal acts of the defendants herein and all of them, and for other relief as to equity should seem meet. And said Bill of Complaint was at the time of the events hereinafter detailed, still pending, but has since been dismissed with the consent of the parties thereto, the right of this Plaintiff to bring this action for damages having been expressly reserved by Order of the Court granting said dismissal. And, thereafter, and while said Bill of Complaint aforesaid, was pending, the said Defendants out of the moneys acquired by said organizations by the illegal practices hereinabove set forth, have actually bought the assets of certain of the constituent members of The Federal League of Professional Baseball Clubs for the purpose of controlling them and stopping them from engaging in the business of professional baseball, and the said Defendants have succeeded in their illegal scheme and conspiracy, and contrary to the Anti-trust Statutes of the United States have removed them from further participation in said competition with the said defendants; and, by means of persuasion and cash contributions, have induced other members of the said The Federal League to enter said conspiracy, and to become parties to said National Agreement, and to acquire franchises in said American or National League.

And, this Plaintiff further says that a league of baseball clubs, such as that of the Federal League, has and must have as its constituent members a number of clubs playing in a number of different cities, each of which must own or furnish a plant or grounds suitable for the playing of baseball and costing many thousands of dollars, and must engage a team or group of professional baseball

24 players, the engagement of which likewise costs a large sum of money; and said constituent members or clubs should in no event be less than six, and though separately organized, they are mutually dependent on each other, and the defection or desertion of one or more of said members must inevitably injure or destroy the others, so that all the said members owe to each other the highest degree of fidelity and good faith in their mutual agreements, all

of which facts are and have always been well known to the defendants, and each of them.

That the said defendants, depending upon the very facts above set forth for the consummation of their contract, combination or conspiracy aforesaid, to injure or destroy the plaintiff and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in baseball aforesaid, deliberately and in utter disregard of the pendency of the proceedings, so as aforesaid pending in the United States District Court for the Northern District of Illinois, Eastern Division, gave or secured to the Federal Baseball Club of Brooklyn, Incorporated, one of the constituent members of said The Federal League of Professional Baseball Clubs, or to the owners thereof, the sum of Four Hundred Thousand ($400,000.00) Dollars, to induce said club to cease competing with the said defendants, and to desert the said plaintiff corporation and the constituent members of the said The Federal League; and this plaintiff further avers that said Federal Baseball Club of Brooklyn, Incorporated, or its owners, have accepted said offer, and have not only agreed not to compete with said organized defendants, but have also agreed to assign to the said defendants, or to some one appointed by them, the grounds owned by said Federal Baseball Club of Brooklyn, Incorporated, thus eliminating the possibility of installing another team in said city for the purpose of carrying on therein the business of The Federal League of Professional Baseball Clubs.

That furthermore, said defendants, in furtherance of the aforesaid contract, combination or conspiracy to injure or destroy
25 the said plaintiff and the said The Federal League of which the plaintiff is a constituent member, and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in baseball aforesaid, have, by flattery, persuasion, and by a cash contribution of not less than Fifty Thousand ($50,000.00) Dollars, induced the Chicago Federal League Baseball Club, or Charles E. Weeghman and his associates, the owners thereof, to abandon and desert the said The Federal League, and to acquire a franchise in the said The National League of Professional Baseball Clubs, one of the defendants, and to operate the same under the terms of the National Agreement, which the said The Chicago Federal League Baseball Club has already alleged in the Bill of Complaint above referred to, to constitute an unlawful restraint of trade and a monopoly; and the plaintiff avers, that the said The Chicago Federal League Baseball Club, or Charles E. Weeghman and his associates, have accepted the offers of the defendants and agreed to dedicate to the use of said The National League the grounds belonging to the said The Chicago Federal League Baseball Club, costing in their construction several hundreds of thousands of dollars, thus eliminating the possibility of The Federal League of Professional Baseball Clubs carrying on its business in Chicago in competition with said defendants.

And the plaintiff further avers that through cash contributions and by persuasion or intimidation the said defendants, or some of them, and principally the said Herrmann, Johnson and Tener, have caused the other constituent members of the said The Federal League,

except the plaintiff herein, to desert said The Federal League and to agree no longer to compete with the said defendants in the business of playing professional baseball, and in some instances to join some one or more of the major or minor leagues operating under the National Agreement, the Rules and Regulations of the National Commission, and the National Commission.

That among those who took part in the negotiations looking to the elimination of the competition theretofore maintained by
26 the Federal League of Professional Baseball Clubs, and consented to destroy the said Federal League on their own behalf and on behalf of other constituent members of the Federal League of Professional Baseball Clubs for the pecuniary and other advantages given or granted to them for so doing, are the following: The Defendant, James A. Gilmore, who was at that time and still is President of the Federal League of Professional Baseball Clubs, and is a resident of the City of Chicago, in the State of Illinois; also the Defendant, Harry Sinclair, who was the owner of the Federal Baseball Club of Newark, Inc., and the Defendant, Charles E. Weeghman, who was the owner of the Chicago Federal League Baseball Club, and said three several Defendants individually and collectively as a Committee, representing the other constituent members of the Federal League of Professional Baseball Clubs, exclusive of the Plaintiff, have entered into and become a part of the general contract, combination or conspiracy aforesaid in restraint of trade, and of the monopoly, or attempt to monopolize, hereinabove referred to, all in violation, as aforesaid, of the Statutes of the United States and the common law.

That the Plaintiff, which was, as aforesaid, a constituent member of The Federal League of Professional Baseball Clubs, expended in the leasing, grading and preparation of its grounds and the construction of its stands a sum in excess of Eighty-five Thousand ($85,000.00) Dollars, and expended in gathering together, under contract with itself, a team or group of players of baseball, a sum in excess of Thirty Thousand ($30,000.00) Dollars; and its franchise in said Federal League prior to the matters now complained of was worth a large sum of money, but by the deliberate and wanton destruction of The Federal League of Professional Baseball Clubs, through the buying off of some of its constituent members, the value of the franchise aforesaid has been destroyed, and the value of its leasehold interest in the said grounds was reduced to Twenty-five thousand ($25,000.00) Dollars; and the plaintiff is confronted with a
27 large liability, exceeding in amount the sum of Thirty Thousand ($30,000.00) Dollars on the contracts with its players for the years 1916 and 1917, for so complete is the monopoly of the defendants, and so absolute is the dominion and control of the National Commission over all organizations engaged in the playing of professional baseball, that there is no possible way for the plaintiff to carry on its business and to utilize its plant and its players under contract with it, for there is in existence no one outside of Organized Baseball, which is in the control of the defendants, as hereinbefore set forth, with whom this plaintiff can compete in the playing of games of baseball.

And this plaintiff alleges that the remaining constituent members of The Federal League except this plaintiff through inducement held out by the defendants agreed to discontinue the business of professional baseball as members of the said Federal League, and to convey or assign to the defendants or some of them their baseball grounds and plants, lead so to do by the hopeless task of meeting the unlawful methods of competition practiced by the defendant, as hereinbefore described, thereby consummating the main purpose of the contract, combination or conspiracy aforesaid, and the monopoly or attempt to monopolize charged herein.

And the plaintiff says that the acts of the defendants above set forth were contrary to the statutes of the United States of America aforesaid and to the common law; and that the further conduct of said business of baseball by the defendants in subordination to the terms of the National Agreement and the Rules and Regulations of the National Commission and said National Commission is likewise contrary to said statutes and common law.

And the plaintiff says that by means of each and all of said acts done by the defendants in pursuance of said contract, combination or conspiracy and monopoly, or attempt to monopolize, aforesaid, they have altogether destroyed the business of the plaintiff, and the plaintiff has been injured in its business and property to the
28 amount of Three Hundred Thousand ($300,000.00) Dollars, by reason of the said acts of the defendants, which are unlawful under the statutes of the United States of America and the common law; and the plaintiff brings this suit under Section 7 of the Act of Congress of the United States of July 2, 1890, Chap. 647, known as the Sherman Anti-Trust Act, and under Section 4 of the Act of Congress of the United States, approved October 15, 1914, Chapter 232, known as the Clayton Anti-Trust Act, to recover threefold such damages.

*Second Count.*

The plaintiff, The Federal Baseball Club of Baltimore, Incorporated, is a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office located in the City of Baltimore, in said State; that it is so organized and exists for the purpose of engaging in the business of giving exhibitions of baseball for compensation, as hereinafter set forth.

The the defendant, The National League of Professional Baseball Clubs, hereinafter referred to as "The National League," is an unincorporated voluntary association, with its principal office located in the City of New York, in the State of New York, and a resident and citizen of said State; that John K. Tener is the President thereof; that said association is organized and exists for the purpose of engaging in the business of baseball, as hereinafter set forth; and, that said association transacts, and for a long time past has continued to transact, the business of its constituent members, hereinafter specified, so far as such business affects said constituent members as a whole, and not as individual corporations.

That in addition to other sources of revenue, the National League has heretofore received, during the existence of its organization, and has a contract right hereafter to receive, a percentage of all
29 gross sums obtained by its constituent members from admissions paid by the public for the privilege of witnessing baseball exhibitions given by such members at their several parks. That The National League has from time to time, levied upon and collected from its constituent members assessments to meet and defray its expenditures, but that since the termination of the competition hereinafter referred to as having formerly existed between The National League and The American Association, no deficit has existed, but large profits have accrued to said National League.

That the defendants, National Exhibition Company, which is a corporation organized and existing under and by virtue of the Laws of the State of New York, with its principal office located in the City of New York, in said State; the Brooklyn Ball Club, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of Brooklyn, in said State; the Philadelphia Ball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Philadelphia, in said State; the Boston National League Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office located in the City of Boston, in said State; the Chicago League Ball Club, which is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located in the City of Chicago, in said State; American Baseball and Athletic Exhibition Company of St. Louis, Missouri, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located in the City of St. Louis, in said State; the Pittsburg Athletic Company, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Pittsburgh in said State; and the Cincinnati Exhibition Company, which is a corporation organ-
30 ized and existing under and by virtue of the laws of the State of Ohio, with its principal office located in the City of Cincinnati, in said State, are each and every of them organized for the purpose of and are actually engaged in the business of baseball; that said corporate defendants compose the club organization of the National League, as the same is generally and popularly known, and said cities of New York, Brooklyn, Philadelphia, Boston, Chicago, St. Louis, Pittsburgh and Cincinnati form the baseball circuit of said The National League.

That the defendants, The American League of Professional Baseball Clubs, hereinafter referred to as "The American League," is an unincorporated voluntary association, with its principal office located in the City of Chicago, State of Illinois, and a resident and citizen of said State; that Bancroft B. Johnson is President thereof; that said Association is organized and exists for substantially the same

purpose and performs substantially the same business functions as those performed by the defendant, The National League.

That The American League derives an income from the business of baseball in manner as specified in its fundamental law or constitution, which said fundamental law or constitution is substantially the same as that hereinbefore set forth with respect to The National League; that in addition to said enumerated sources of revenue, The American League has heretofore received during the existence of its organization, and *have* a contract right hereafter and for a period of years to receive, a percentage of all gross sums obtained by its constituent members from admissions paid by the public for the privilege of witnessing baseball exhibitions given by said members at their several parks. That The American League has from time to time as a matter of practise, levied upon and collected from its constituent members assessments to meet and defray its expenditures, but that since the termination of the competition, hereinafter referred to as having existed between The National League and
31 The American Association, no deficit has existed, but large profits have accrued to said American League.

That the defendants, the Greater New York Baseball Association, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of New York, in said State; the Boston American League Baseball Club, which is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal office located in the City of Boston, in said State; American Baseball Club of Philadelphia, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Philadelphia, in said State; the Washington American League Baseball Club, which is a corporation organized and existing under and by virtue of the laws of the District of Columbia, with its principal office located in the City of Washington, in said District; American League Baseball Club of Chicago, which is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located in the City of Chicago, in said State; the St. Louis American League Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located in the City of St. Louis, in said State; the Detroit Baseball Company, which is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office located in the City of Detroit, in said State; and the Cleveland Ball Club Company, which is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal office located in the City of Cleveland, in said State, are each and every of them organized for the purpose of and are actually engaged in the business of baseball; that said corporate defendants compose the club organization of The American League, as the same is generally and popularly
32 known, and the said cities of New York, Boston, Philadelphia, Washington, Chicago, St. Louis, Detroit and Cleveland form the baseball circuit of said The American League.

That the defendant, August Herrmann, is a resident and citizen of the City of Cincinnati, in the State of Ohio, is President of said The Cincinnati Exhibition Company and is also Chairman of The National Commission, so-called, hereinafter more particularly referred to; that the other members of The National Commission, who are hereby made parties defendant, are Bancroft B. Johnson and John K. Tener; that said Johnson is a resident and citizen of the City of Chicago, in the State of Illinois; that said Tener is a resident and citizen of the City of Philadelphia, in the State of Pennsylvania; that the defendant, James A. Gilmore, is a resident of the City of Chicago, in the State of Illinois, and a citizen of said State; that the defendant, Harry Sinclair, is a resident of Tulsa, in the State of Oklahoma, and a citizen of said State, and the defendant, Charles E. Weeghman, is a resident of Chicago, in the State of Illinois, and a citizen of said State.

That the defendant corporations and the said National League and the said American League, and the said members of the National Commission, are engaged in the business of giving exhibitions of the games of baseball for profit in and among the various States of the United States, as hereinafter set forth, which business is essentially and fundamentally commerce among the several States.

That the defendants and each of them have entered into a contract or contracts, combination in the form of trust or otherwise, or conspiracy, as hereinafter set forth in restraint of trade or commerce among the several States, and through such contract or contracts, combination in the form of trust or otherwise, or conspiracy, have caused damage to the plaintiff in the conduct of its business, which is likewise essentially interstate commerce as hereinafter set forth, all of which is in violation of the terms of the Act of Congress of
33 the United States of July 2, 1890, Chapter 647, known as the "Sherman Anti-Trust Act," and likewise in violation of the Act of Congress of October 15, 1914, Chapter 232, known as the "Clayton Anti-Trust Act."

That the defendants and each of them have monopolized or attempted to monopolize, or have combined or conspired with each other to monopolize a part of the trade or commerce among the several States as hereinafter set forth, and through such monopoly or attempt at monopoly or combination or conspiracy, have caused grave damage to the plaintiff in the conduct of its business, which is likewise essentially interstate commerce, as hereinafter set forth, in violation of the terms of the Act of Congress of the United States of July 2, 1890, Chapter 648, known as the "Sherman Anti-Trust Act," and likewise in violation of the Act of Congress of October 15, 1914, Chapter 232, known as the "Clayton Anti-Trust Act."

That the plaintiff is a resident and citizen of the City of Baltimore, and State of Maryland; that the said several constituent members of The National League and The American League, respectively, are each residents of the cities and States in which their respective principal offices are located, as hereinbefore alleged; and are each citizens of the several States of their respective incorporations, as hereinbefore alleged; and that the amount involved in this contro-

versy, exclusive of costs and interest, exceeds the sum of three thousand ($3,000) dollars.

That the business of baseball as conducted by each of the Leagues above named, and by each and every of the constituent members thereof, respectively, consists in the giving of baseball exhibitions to the public in and among the several States of the United States for admission fees charged to and collected from the public therefor; that said exhibitions are given by two teams representing different cities in said circuits, contesting with each other; that each individual contest is a part of a prearranged schedule according
34 to which each club is provided to play with every other club of the League of which it is a member an equal number of games, the admission fees, after first deducting and paying the respective Leagues, of which they are members, a fixed percentage thereof, being divided between the contesting clubs at the close of each game according to a fixed agreement made in advance of each season; that such schedule is strictly pursued except so far as the same may be interfered with by condition of weather and other casualties; that such schedule is prepared and controlled by the officers of the several Leagues, and is mailed by them through the United States mail to all newspapers of importance in all of the cities of the United States, and is advertised by the officers of the constituent members thereof in and among the several States, and is performed under the supervision of the officers of the two Leagues, aforesaid, subject to the domination and control of The National Agreement, the Rules and Regulations of the National Commission, and the National Commission, hereinafter referred to, and all of said officers of the several Leagues, receive compensation for their services rendered in that and other connections, and, among other things, employ, pay and control umpires, who direct and govern each of the individual games in the several States, which said umpires, as well as said teams, travel from city to city and from State to State, the said teams for the purposes of contesting, as aforesaid, and the said umpires for the purpose of directing and governing said contests, as aforesaid; that records of the victories and defeats of each club in said respective Leagues are kept by the officers of each League and at or soon after the close of each playing season (which playing season customarily begins early in April, and terminates early in October of each year) an emblem of championship is awarded in each League by the officers of each League to that particular club thereof which has obtained the largest percentage of victories over defeats; that a baseball team consists of nine (9) regular players besides substitutes, each of whom plays in different positions, to wit:
35 Pitcher, catcher, first base, second base, third base, shortstop, rightfield, centerfield and leftfield, each of which positions requires special and peculiar talents, training and qualifications for the expert playing thereof; that the financial results obtained by the various members of the said two Leagues are affected not only by the positions which their Clubs from time to time may occupy in the race for the pennant, so-called, but also by the quality of the exhibitions which they offer to the public; that the expertness of a ball-

player consists in the exercise of a high degree of skill which involves as well the dexterous use of the muscles as the quick and resourceful employment of the brain; that such expertness is only acquired by long practice and training; that there are now in the United States about ten thousand professional baseball players of varying degrees of expertness.

That prior to the organization of The Federal League, hereinafter described, all of said ball-players were under the domination and control of the National Agreement and the Rules and Regulations of the National Commission and the National Commission as hereinafter alleged, and were in the service of The National League. The American League and the various minor Leagues, hereinafter referred to, all operating under the National Agreement and the Rules and Regulations of the National Commission, hereinafter referred to, and under the domination and control of said National Commission; that said Leagues and their constituent clubs or members so operating and so dominated and controlled compose what is popularly known and designated as "Organized Baseball," and are hereinafter thus referred to in this declaration; that as the ball-players in the two Major Leagues, defendants herein, lose their special fitness and unique and extraordinary skill by virtue of age, or other causes their places are required to be filled; that the only source from which such constantly recurring new demands may be supplied is from the ranks of said minor leagues, or from and among amateur baseball players; that the degree of expertness of amateur baseball players is
36 rarely, if ever, adequate to meet the standards and requirements of major league clubs.

That heretofore, during the existence of the National Agreement and the Rules and Regulations of the National Commission, and now, said National, American and minor leagues have claimed and asserted the absolute right and title to all baseball players in their ranks, and have heretofore claimed and now claim that once a baseball player is employed by any club operating under the National Agreement and the Rules and Regulations of the National Commission, such player always continues to be subject to the demands of the various clubs operating under the National Agreement and the Rules and Regulations of the National Commission, and is at no time and under no circumstances entitled to contract with any club not operating under the National Agreement, and the Rules and Regulations of the National Commission, except when all of the clubs so operating have indicated that they no longer desire the services of such player, all of which claims, among other ways and means, are enforced and accomplished by and through the instrumentalities of the National Agreement, the Rules and Regulations of the National Commission, and said National Commission, hereinafter referred to, and to which all of the constituent members of The National League, The American League and the minor leagues are, through their various officers, parties, and are controlled thereby; that said claims are also among other ways, enforced and accomplished through the so-called reservation lists caused to be maintained by said National Agreement, the Rules and Regulations of the National Commission,

and the National Commission, as well as by the maintenance of black-lists, and by means of threats and intimidations.

That in addition to the provisions of said National Agreement, the constitution or fundamental law of The National League provides as follows:

"Each club of this League shall be entitled to the right of reservation. On or before the 28th day of September in each year
37 each club shall transmit to the Secretary a list of all players under contract on that day, which such club desires to retain for the following season, together with those secured for future service by purchase or draft or while free agents, and those under suspension for insubordination or other causes as well as those ineligible for refusal to respect reservation by, or contract with, such club for that or a preceding season, or for any other valid reason. Such players shall be ineligible to contract with any other club in this League."

That in and by said constitution or fundamental law of The National League, it is further provided in Section 33 thereof, as follows:

"A player shall not enter into negotiations with any other club for services without the consent of the club which he is under contract or reservation, nor shall any representative, manager, or agent of any club negotiate for the services of a player of another club without the consent of the club having title to the player's services."

And the plaintiff further alleges that the constitution or fundamental law of The American League is to all intents and purposes substantially the same as that of The National League.

That the National League, in addition to the control conferred upon and exercised by it over the individual games of baseball, and the players engaged with its constituent members, defendants herein, is by its constitution or fundamental law given the exclusive control over the territory or franchise rights of the several clubs composing its circuit, except as such exclusive control is in turn dominated by the National Agreement and the Rules and Regulations of the National Commission and said National Commission. That said constitution or fundamental law, in Section 31 thereof, provides as follows:

"This League shall have exclusive control of each city in its circuit and of the surrounding territory to the extent of five miles in every direction from its corporate limits, unless such city be represented in the American League as well as the National League, in which
38 event it shall be under the joint control of these Leagues. No outside National Agreement club shall be permitted to play exhibition games in such territory except with the consent of the local major league club or clubs located therein."

And the plaintiff further alleges the fact to be, that the constitution or fundamental law of The American League contains substantially the same provisions as that of The National League above set forth.

That the profits of the two defendant Leagues and of their constituent members are directly in proportion to the public interest they can arouse in the playing of their said schedules, and one essential factor in arousing such public interest and producing such profits is the competition in the playing of baseball between clubs

located in different cities of large size and importance, and located in different States, and in different sections of the United States, so that intercity, interstate and intersection competition is the very essence of the business of baseball as now conducted, and always heretofore conducted by the said defendants. That said exhibitions are conducted daily and contemporaneously in the cities constituting the circuits of the American League and of the National League during the playing season, in such manner that in each League each club plays half of its games at home on the grounds owned by it in the city of its residence, and half of its games abroad, an equal number of the games so played abroad being played in each of the other cities constituting the Circuit of the League to which such club belongs; that it is of the essence of the business, and a necessary part of the business of all of the clubs constituting the two said defendant Leagues and of the two said Leagues, that the teams representing the constituent members of said Leagues consisting of from twenty to thirty players shall continually travel by rail back and forth between the said cities in different States of the United States.

That the various players so employed on said teams have contracts for their services, signed usually before the beginning of each
39 baseball season, which, among other things obligate the members of said teams to travel from State to State during the playing season, in accordance with the requirements of the schedules of the two respective Leagues, and the officers of the said constituent members of the said respective Leagues are actively engaged during the entire playing season in arranging and providing for the transportation of said teams, together with their equipment and paraphernalia,—such as uniforms, bats and other appliances needed for the playing of baseball,—the entire cost of which transportation is borne by the Defendant Clubs, and in no part by the individual players, and said individual players are subject to the directions of the officers of said members of said Leagues as to the time and manner of their moving from city to city and State to State, and according to the terms of the National Agreement the various defendant corporations, members of the said respective Leagues, are responsible to each other for the presence of their players, with their paraphernalia and equipment, at each city on the day and time appointed in the prearranged schedules hereinbefore referred to, and are subject to various and sundry fines and penalties for failure so to appear, and in the playing of said games in the two said major Leagues there are consumed a large number of baseballs, not less than 3,000 dozen, and the plaintiff further avers that the National League has entered into a contract whereby it purchases from A. G. Spalding and Bros., a corporation engaged in the manufacture of said article, all of the balls used by the clubs constituting the circuit of said National League, and sells the same at a profit to its constituent members and causes them to be shipped in interstate commerce to the said purchasers as and when required, and the said American League carries on for profit a substantially similiar activity in the purchasing and shipment of balls to the constituent members of the said American League, and the purchase, sale and shipment in interstate commerce of the said articles is an essential part of the business of baseball and the profit

realized therefrom constitutes a large and important part of the revenues of the said American and National Leagues.

That prior to the 11th day of September, 1903, the said defendant, The American League of Professional Baseball Players, existed under and was known by the name of The American Association of Professional Baseball Players, and was on said date, and had prior thereto been, engaged in the business of baseball with substantially the same individual owners as now own and control, and since said date have owned and controlled the majority of the stock of its several member clubs, with, however, a slightly different circuit of cities. That for a few years prior to said 11th day of September, 1903, the said The American Association of Professional Baseball Players had undertaken to compete with organized baseball as it then existed; that Organized Baseball, as it existed on and prior to the 11th day of September, 1903, consisted of the defendant, The National League, and the other defendants now constituent members of said The National League, as hereinbefore alleged, and the various minor leagues now existing throughout the United States of America, except such of them as have since been formed in the United States of America, all of which new minor leagues did at the time of their organizations or creation come within the combination of Organized Baseball or have since the dates of their respective organization accepted the provisions of the said National Agreement and operated thereunder.

That on said 11th day of September, 1903, and prior thereto, Organized Baseball operated under a national agreement substantially in the same language and adopted for the same purposes as the National Agreement hereinafter more particularly referred to; that a few weeks prior to said 11th day of September, 1903, a combination was arranged between said The American Association of Professional Baseball Players and said Organized Baseball, and was consummated by said The American Association of Professional Baseball Players entering or being taken into the combination of Organized Baseball under its present style and name of The American League and the execution of the said National Agreement hereinafter referred to; that from said 11th day of September, 1903, down to the organization of The Federal League, on or about the first day of March, 1913, there existed in the United States of America substantially no leagues except those operating as constituent members of Organized Baseball under and in subordination to the terms of the National Agreement, the Rules and Regulations of the National Commission and said National Commission, hereinafter more particularly referred to.

That on said 11th day of September, 1903, the defendants, The National League and The American League and The National Association, which said National Association is hereinafter more particularly referred to, described, made and entered into a certain instrument of writing styled by them and since known as "The National Agreement for the Government of Professional Baseball," which is expressly declared therein and claimed to be indissoluble; that a copy of the said the National Agreement is hereto annexed

and made a part hereof as "Plaintiff's Exhibit A;" that the objects expressed in said the National Agreement are, for the most part, pretenses, shams, subterfuges and disguises; that the true objects of the said the National Agreement were, have always been and still are—

(*a*) The perpetuation of professional baseball in the hands of the contracting parties, to the end that those engaged in the business of professional baseball within the combination might be safeguarded in the respective localities in which they were doing business against any professional baseball competition therein;

(*b*) The protection of alleged property rights in the players then or who might subsequently be engaged by any of the contracting parties, to the end that they might control the compensation to be paid to such players and might so dominate and control such players that the engagement of their services by any person or persons,
42 corporation or corporations who might undertake to engage in the business of baseball without the combination would be difficult if not impossible.

That prior to the time of the organization of The Federal League, hereinafter set forth, there had for a long time existed in the United States of America two, and only two, major leagues for the carrying on of the business of baseball, to wit: The defendants, The National League and The American League; that said major leagues give their exhibitions in the larger cities of the several States of the United States; that said minor leagues give their exhibitions in the smaller cities of the several States of the United States; that an enumeration of said minor leagues, and the various clubs composing the same, is more fully set forth in the schedule hereto attached and made part hereof as "Plaintiff's Exhibit B."

That said The National Association is a voluntary unincorporated association which performs for all said minor leagues and clubs substantially the same business functions and services in substantially the same manner, and with an income derived from substantially the same character of sources, and for profit and compensation, as said National League and said American League in their respective spheres, but subject a tall times to said National Agreement, the Rules and Regulations of said National Commission, and said National Commission itself.

That all of said baseball leagues and clubs operate and conduct their business under, pursuant and in subordination to said the National Agreement, the Rules and Regulations of the National Commission and said National Commission.

That on or about the 6th day of January, 1914, an organization known as the Baseball Players' Fraternity, composed wholly of baseball players under the domination of clubs of Organized Baseball, petitioned the National Commission for the correction of certain alleged abuses; that pursuant to said petition and after a hearing thereon, a modification, so-called, of said National Agreement
43 was made by the said National Commission, which said modification is hereto attached and made a part hereof as "Plaintiff's Exhibit C;" that said National Agreement as so modified is the

dominating and controlling instrument under which Organized Baseball operates at the present time and which agreement dominates and controls each and all of the defendants herein.

That pursuant to said National Agreement, said National Commission has heretofore been appointed and acted and is now appointed and acts; that pursuant to said National Agreement, said National Commission has adopted and from time to time does adopt Rules and Regulations which are as binding upon the constituent membership of Organized Baseball as said National Agreement itself; that a copy of said Rules and Regulations is hereto attached and made a part hereof as "Plaintiff's Exhibit D."

That said National Commission is the chief executive body of said Organized Baseball and is also the highest legislative body, as to whose law there is no veto, and the supreme judicial tribunal from whose decrees there is no appeal; that said National Commission is conducted for profit and derives an income from various sources, that is to say:

(*a*) From assessments which it is empowered to levy and to defray expenses.

(*b*) From fines imposed and collected pursuant to said National Agreement and said Rules and Regulations.

(*c*) From a percentage of gross receipts exacted by it for managing, directing and supplying the umpires for city series contests, for city championships, so-called, and alleged World's Series contests annually held between the winners of the pennants of said National and American Leagues.

That from the so-called World's Series contests, conducted under the auspices of said National Commission during the month of October, 1915, between the Philadelphia National League Club and the Boston American League Club, said National Commission received a sum of money in excess of Twenty-five thousand ($25,000.00) dollars, its share being ten per cent of the gross receipts of such series; and, that by virtue of said percentage of receipts received from said World's Series throughout a number of years, and by virtue of sums of money received from its other sources of revenue, said National Commission has not only been able to defray all of its current expenses for salaries and other incidentals, but has accumulated a large surplus, which said surplus, together with surpluses acquired by The National League and The American League, respectively, were used for the purpose of injuring or destroying the plaintiff, and for the further purpose of carrying into effect and keeping in force said illegal National Agreement; that said World's Series contests and each of them have been played pursuant to a schedule, and the contesting teams, with the umpires governing and directing said contests, have traveled back and forth between the several cities represented by the respective contesting teams in the respective States of the United States.

That the defendants, and each of them, and The National Commission and its constituent members, and each of them, are at all times engaged in the buying, selling, exchanging, bartering and dealing in players, and in conveying said players by means of the instru-

mentalities of commerce between and among the several States; that the manner of transacting the business of buying, selling, exchanging, bartering and dealing in players is more fully defined in The National Agreement and the Rules and Regulations of The National Commission, and is especially supervised by said National Commission.

That said The National Agreement, said Rules and Regulations, said National Commission and said organized baseball, herein are each and every of them contrary to, and in violation of, the common law, and in contravention of the anti-trust and anti-monopoly statutes of the United States of America aforesaid; that the conduct of said business under, pursuant and in subordination to the terms of said The National Agreement, the Rules and Regulations
45 of the National Commission and said National Commission is in like manner contrary to the common law and to said statute laws, creates a monopoly, or attempted monopoly, and represents and is a continuing contract, combination in the form of trust or otherwise or conspiracy directed alike against the public, the players required and employed in connection therewith and those undertaking to enter into the business of baseball independently of organized baseball, and especially this plaintiff, and is in restraint of the right of private contract; and that said unlawful contract, combination in the form of trust or otherwise, or conspiracy was designed to and does restrain trade and commerce in and among the several States.

That on or about the 1st day of March, 1913, The Federal League of Professional Baseball Clubs, a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal office located in the City of Indianapolis, hereinafter called "The Federal League," undertook to engage in the business of baseball; and pursuant to the plan of its incorporators, various constituent members of such Federal League were organized for the purpose of maintaining and operating separate corporations in each of the cities hereinafter set forth, for the purpose of engaging in baseball as a business, and obtaining the revenue to be obtained from admissions paid by the public for the privilege of witnessing baseball exhibitions given by its said constituent members.

That the Federal League Baseball Club of Brooklyn, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office located in the City of Brooklyn, in said State; the Exposition Park Association, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office located in the City of Pittsburgh, in said State; the Buffalo Federal League Baseball Company, Incorporated, which is a corporation organized and existing under and by virtue of the laws of
46 the State of New York, with its principal office located in the City of Buffalo, in said State; the Federal Baseball Club of Baltimore, Incorporated, the Plaintiff herein, and a corporation organized and existing under and by virtue of the laws of the State of Maryland, with its principal office located in the City of Baltimore, in said State; the St. Louis Federal League Baseball Company, which is a corporation organized and existing under and by virtue of the

laws of the State of Missouri, with its principal office located at the City of St. Louis, in said State; the Federal Baseball Club of Indianapolis, Incorporated, which is a corporation organized and existing under and by virtue of the laws of the State of Indiana, with its principal office located at the City of Indianapolis, in said State; the Federal Baseball Company of Kansas City, which is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its principal office located at the City of Kansas City, in said State; the Chicago Federal League Baseball Club, a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office located at the City of Chicago, in said State, were each and every of them organized for the purpose of engaging in the business of baseball, as constituent members of said Federal League, said corporations composing the club organization of the said Federal League as the same became generally and popularly known, and said cities of Brooklyn, Pittsburgh, Buffalo, Baltimore, St. Louis, Indianapolis, Kansas City and Chicago forming the baseball circuit of the said The Federal League; and, thereafter, to wit, prior to the playing season of 1915, the Federal Baseball Club of Indianapolis, Incorporated, sold its franchise, as a member of said Federal League, to a corporation organized under the laws of the State of New Jersey, known as the Federal Baseball Club of Newark, Incorporated, and said City of Newark did thereupon become one of the cities constituting the baseball circuit of said The Federal League in the place and stead of the said City of Indianapolis, as aforesaid.

47 That pursuant to its intentions to engage for profit in the business of conducting exhibitions of professional baseball, the various constituent members of the said The Federal League, including the plaintiff, did thereupon go into the market, and in competition with the defendant corporation did engage as its players more than three hundred men, having special aptitude or skill in the playing of baseball; and said group of players constituted the only players of professional baseball in the United States of America not under the dominion and control of the National Agreement, the Rules and Regulations of the National Commission and the National Commission. And, the said The Federal League constituted during the period of its existence the only organization carrying on any competition with the aforesaid National League and the American League and conducting contests independently thereof.

That immediately upon the entry of said The Federal League into the business of baseball, the defendants, representing organized baseball as an entirety, and particularly the defendants, Herrmann, Johnson and Tener, contracted, combined or conspired together, in violation of the statutes aforesaid and the common law, to injure or destroy the business of the said The Federal League, and of its constituent members, and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in baseball among the several States, and repeatedly announced publicly and privately, through the press and to individual players considering entering into contracts with the constituent members of the Federal League, that the said League

and its constituent members were financially irresponsible and would not be able to perform their contracts, and would not be able to continue in the business for such length of time as to enable them to play out their schedules of games as a League of major importance; and the said defendants, or some of them, likewise threatened that any player who was or had ever been a member of any club in Organized Baseball, who should contract with any of the constituent members of The Federal League, including the plaintiff,
48 should thereafter be barred from ever playing in Organized Baseball; that each and every of said statements, and each and every of said threats were made for the purpose of harrassing and injuring the plaintiff and the other constituent members of The Federal League, and for the further purpose of deterring the players within the combination of Organized Baseball from, at any time or under any circumstances, entering into contracts with the plaintiff, or any other of the constituent members of the said The Federal League; and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of The Federal League; and for the purpose, if possible, by such means of destroying the said The Federal League, and ruining its constituent members and thereby eliminating competition with said organized baseball.

And, this Plaintiff further says that a league of baseball clubs, such as that of the Federal League, has and must have as its constituent members a number of clubs playing in a number of different cities, each of which must own or furnish a plant or grounds suitable for the playing of baseball and costing many thousands of dollars, and must engage a team or group of professional baseball players, the engagement of which likewise costs a large sum of money; and said constituent members or clubs should in no event be less than six, and though separately organized, they are mutually dependent on each other, and the defection or desertion of one or more of said members must inevitably injure or destroy the others, so that all the said members owe to each other the highest degree of fidelity and good faith in their mutual agreements, all of which facts are and have always been well known to the defendants, and each of them.

That immediately upon the entrance of the said Federal League into the business of professional baseball, said League and its constituent members as aforesaid, being the only competitors of the defendants in the business of professional baseball, the defend-
49 ants herein (with the exception of the defendants James A. Gilmore, Charles E. Weeghman and Harry Sinclair), for the purpose of maintaining the illegal monopoly and combination hereinbefore described, and in furtherance of a conspiracy entered into upon their part, in restraint of trade and commerce among the several states, did agree and conspire, among themselves, to destroy the business of the said Federal League and its constituent members as aforesaid, and in furtherance of said illegal purpose, agreement and conspiracy on their part did repeatedly announce publicly and privately through the press, and to individual players considering entering into contracts with the constituent members of the Federal League, that the said League, and its constituent members, were

financially irresponsible and would not be able to perform their contracts, and would not be able to continue in the business for such length of time as to enable them to play out their scheduled games, as a League of major importance, and the said defendants (with the exceptions above mentioned) did likewise threaten that any who had been a member of any club in organized baseball, who should contract with any of the constituent members of the Federal League, including the plaintiff, should thereafter be barred from ever playing in organized baseball. That each and every of said statements, and each and every of said threats were made for the purpose of harrassing and injuring the plaintiff and the other constituent members of the Federal League, and for the further purpose of deterring the players within the combination of organized baseball from at any time or under any circumstances entering into contracts with the plaintiff or any of the other constituent members of the Federal League, and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of the Federal League and for the purpose, if possible, by such means of destroying the said Federal League and ruining its constituent members, and thereby eliminating competition with said organized baseball.

50 And the plaintiff further says that by reason of the existence of said illegal monopoly and combination, and as a result of the said unlawful conspiracy in restraint of trade and commerce among the states as aforesaid, and of said unlawful conspiracy on the part of said defendants (with the exceptions above stated) to injure and destroy the business of the said Federal League and its constituent members, and as a result of the unlawful acts aforesaid the plaintiff did during the years 1914 and 1915 suffer as an immediate consequence thereof great financial loss in its said business in that plaintiff was thereby unable to procure those professional players which in a free and open market it could have otherwise obtained, and was further unable to obtain that confidence of the public in its continued existence, which is necessary to the drawing and maintaining of a large and remunerative attendance of spectators at its games of baseball.

And the plaintiff further says that for the purpose of accomplishing the unlawful objects and purposes as aforesaid, and for the further purpose of suppressing all competition in the business of professional baseball, and preserving and maintaining the complete and absolute monopoly which had been acquired therein by the defendants (with the exceptions above stated), the said defendants did offer large sums of money to the constituent members of the Federal League to desert said League; and the plaintiff says that the said defendants did give or secure to the Federal Baseball Club of Brooklyn, Incorporated, one of the constituent members of said Federal League of Professional Baseball Clubs, or to the owners thereof, the sum of $400,000 for said purpose, and that said Federal Baseball Club of Brooklyn, Incorporated, agreed thereupon to assign to said defendants, or to some one appointed by them, the grounds owned by said Federal Baseball Club of Brooklyn, Incorporated, thus eliminat-

ing the possibility of installing another team in said City for the purpose of carrying on therein the business of the Federal League of Professional Baseball Clubs; and did likewise pay to the
51 Chicago Federal Baseball Club, or to Charles E. Weeghman and his associates, the owners thereof, a sum of not less than $50,000 to abandon and desert the said The Federal League and to acquire a franchise in the said The National League of Professional Baseball Clubs, one of the defendants, and to operate the same under the terms of the National Agreement, and also to dedicate to the use of the said The National League the grounds belonging to the said The Chicago Federal League Baseball Club, costing several hundreds of thousands of dollars, thus eliminating the possibility of The Federal League of Professional Baseball Clubs carrying on its business in Chicago in competition with defendant.

And the plaintiff further avers that through cash contributions and by persuasion or intimidation the said defendants, or some of them, and principally the said Herrmann, Johnson and Tener, have caused the other constituent members of the said The Federal League, except the plaintiff herein, to desert said The Federal League and to agree no longer to compete with the said defendants in the business of playing professional baseball, and in some instances to join some one or more of the major or minor leagues operating under the National Agreement, the Rules and Regulations of the National Commission, and the National Commission.

That among those who took part in the negotiations looking to the elimination of the competition theretofore maintained by the Federal League of Professional Baseball Clubs, and consented to destroy the said Federal League on their own behalf and on behalf of other constituent members of the Federal League of Professional Baseball Clubs for the pecuniary and other advantages given or granted to them for so doing, are the following: The Defendant, James A. Gilmore, who was at that time and still is President of the Federal League of Professional Baseball Clubs, and is a resident of the City of Chicago, in the State of Illinois; also the Defend-
52 ant, Harry Sinclair, who was the owner of the Federal Baseball Club of Newark, Inc., and the Defendant, Charles E. Weeghman, who was the owner of the Chicago Federal League Baseball Club, and said three several Defendants individually and collectively as a Committee, representing the other constituent members of the Federal League of Professional Baseball Clubs, exclusive of the Plaintiff, have entered into and become a part of the general contract, combination or conspiracy aforesaid in restraint of trade, and of the monopoly, or attempt to monopolize, hereinabove referred to, all in violation, as aforesaid, of the Statutes of the United States and the common law.

That the Plaintiff, which was, as aforesaid, a constituent member of The Federal League of Professional Baseball Clubs, expended in the leasing, grading and preparation of its grounds and the construction of its stands a sum in excess of Eighty-five Thousand ($85,000.00) Dollars, and expended in gathering together, under contract with itself, a team or group of players of baseball, a sum in excess

of Thirty Thousand ($30,000.00) Dollars; and its franchise in said Federal League prior to the matters now complained of was worth a large sum of money, but by the deliberate and wanton destruction of The Federal League of Professional Baseball Clubs, through the buying off of some of its constituent members, the value of the franchise aforesaid has been destroyed, and the value of its leasehold interest in the said grounds has been reduced to not exceeding Twenty-five Thousand ($25,000.00) Dollars; and the plaintiff is confronted with a large liability, exceeding in amount the sum of Thirty Thousand ($30,000.00) Dollars on the contracts with its players for the years 1916 & 1917, for so complete is the monopoly of the defendants, and so absolute is the dominion and control of the National Commission over all organizations engaged in the playing of professional baseball, that there is no possible way for the plaintiff to carry on its business and to utilize its plant and its players under contract with it,
53 for there is in existence no one outside of Organized Baseball, which is in the control of the defendants, as hereinbefore set forth, with whom this plaintiff can compete in the playing of games of baseball.

And the plaintiff says that each and every the acts of the defendants above set forth were contrary to the Statutes of the United States of America aforesaid, and to the common law, and that the combination among the various Leagues and Clubs herein described as organized baseball is and has been since the year 1903, an absolute and complete monopoly, and that the maintenance and existence thereof is in violation of the Statutes of the United States of America aforesaid, and that the conduct of the business of baseball by the said defendants in subordination to the terms of the National Agreement and the rules and regulations of the National Commission and the said National Commission constitutes and has constituted from its inception an unlawful conspiracy in restraint of trade and commerce among the several states of the United States, and an unlawful conspiracy and combination to monopolize or attempt to monopolize all or part of the trade and commerce in baseball aforesaid.

And the plaintiff says that by means of each and all of said acts done by the defendants in pursuance of said contract, combination or conspiracy and monopoly, or attempt to monopolize, aforesaid, they have altogether destroyed the business of the plaintiff, and the plaintiff has been injured in its business and property to the amount of Three Hundred Thousand ($300,000.00) Dollars, by reason of the said acts of the defendants, which are unlawful under the statutes of the United States of America and the common law; and the plaintiff brings this suit under Section 7 of the Act of Congress of the United States of July 2, 1890, Chap. 647, known as the Sherman Anti-Trust Act, and under Section 4 of the Act of Congress of the United States, approved October 15, 1914, Chapter 232, known as the Clayton Anti-Trust Act, to recover threefold such dam-
54 ages.

And the plaintiff claims Nine Hundred Thousand ($900,000.00) Dollars damages.

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——— ———,
——— ———,
*Attorneys for Plaintiff.*

55 PLAINTIFF'S EXHIBIT A.

*The National Agreement for the Government of Professional Baseball.*

Entered Into Between the National and American Leagues and the National Association, at Cincinnati, September 11, 1903, as Changed, Revised, and in Force 1912.

This agreement made and entered into by and between The National League of Professional Baseball Clubs and The American League of Professional Baseball Clubs, known and designated herein as Major Leagues, parties of the first part, each with the other and both, jointly and severally, with The National Association of Professional Baseball Leagues, known and referred to herein as Minor Leagues, party of the second part, shall be styled the National Agreement, and shall have for its objects:

(1) Perpetuation of baseball as the national pastime of America, by surrounding it with such safeguards as will warrant absolute public confidence in its integrity and methods, and by maintaining a high standard of skill and sportsmanship in its players.

(2) Protection of the property rights of those engaged in baseball as a business without sacrificing the spirit of competition in the conduct of clubs.

(3) Promotion of the welfare of ball-players as a class by developing and perfecting them in their profession and enabling them to secure adequate compensation for expertness.

(4) Adoption of a uniform code of rules for playing baseball.

56 Article I.

Section 1. This Agreement shall be indissoluble except by the unanimous vote of the parties to it, and if any of said parties, or a league or club member thereof, withdraws from it, or violates any of its fundamental principles, the party so withdrawing or offending shall be treated as the enemy of Organized Baseball.

Article II.

Section 1. Each party to this Agreement retains the right to conduct its affairs and govern its players according to its constitution and by-laws, not in conflict with this Agreement.

## Article III.

Section 1. Whenever the Commission certifies to their respective presidents that in its judgment the playing rules require amendment, a joint committee of three representatives from each Major League shall meet on or before October 15th of the year in which such notice is served and adopt a code of rules to regulate the playing of the game of baseball for the ensuing season, a majority vote being required to adopt, revise or repeal a rule.

Section 2. The respective presidents of each Major League shall in person or by proxy annually prepare a schedule of games for each Major League for the ensuing pennant race, avoiding as far as possible conflicts in championship games in cities in which rival clubs are located. The schedules thus drafted shall be submitted to each Major League not later than the second week in February, of each year, and no alteration shall be made in any date or dates allotted therein without the concurrence of both Major League Presidents.

Section 3. Neither Major League shall give instructions to or impose restrictions on its representatives on the Committee on Rules or the Committee on Schedules as to the manner, methods or limitations under which their respective duties shall be discharged.

## Article IV.

Section 1. A commission of three members, to be known as the National Commission, is hereby created with power to construe and carry out the terms and provisions of this Agreement, excepting when it pertains solely to the internal affairs of a party to this Agreement. One member shall be the President of the National League and one the President of the American League. These two members shall meet on or before the first Monday of January in each year and elect by a majority vote a suitable person as the third member. The third member so chosen shall be the Chairman of the Commission for one year from the date of his election, and shall preside at all meetings. Each member shall have a vote on all questions which may come before it, except as hereinafter directed. A Secretary shall be elected yearly. The salary of the Chairman, Secretary and of all employees shall be fixed by the Commission from time to time. Other members of the Commission shall serve without compensation. Immediately after the election of a Chairman and Secretary, the Commission shall proceed with the transaction of such business as may come before it.

Section 2. Sessions of the Commission, in addition to the annual meetings on the first Monday in January of each year, and on the first day of the drafting period of each year, shall be held at the call of the Chairman, or at the request of the other two members of the Commission.

Section 3. The National Commission shall have the power to inflict and enforce fines or suspensions, or both, upon any party to this

Agreement, or any of its members, adjudged by it to have violated the letter or spirit of this Agreement.

Section 4. Whenever a National League Club and an American League Club claim the services of the same player by selection, reservation or contract, the right to said player shall be established by the decision of the Chairman of the Commission, who shall determine the case on the law and evidence without the aid of either of his associates. The same procedure shall be followed in the
58 determination of any other issue between the Major Leagues or between Major League clubs of different leagues.

Section 5. Whenever a National League Club and a Minor League Club cannot amicably arrange differences over a player, the testimony shall be heard and the case adjudicated by the Chairman of the Commission and the representative of the American League. If the contention be between an American League Club and a Minor League Club, the decision shall be made by the Chairman of the Commission and the representative of the National League. If the Chairman and the Major League member of the Commission entitled to a vote on any question arising between a Major and a Minor Club, shall not agree, the Chairman's finding shall determine the case.

## Article V.

Section 1. The circuit of each Major League shall consist of the following cities: National League: Boston, New York, Brooklyn, Philadelphia, Pittsburgh, Chicago, St. Louis and Cincinnati. American league: Boston, New York, Philadelphia, Washington, Cleveland, Detroit, Chicago and St. Louis. Neither Major League circuit shall be changed without the consent of the majority of the clubs of each Major League. It is further provided that there shall be no consolidation in any city where two Major League Clubs exist; nor shall any club transfer or release its players for the purpose of injuring or weakening the League of which it is a member; provided, however, that the circuit of either Major League may be changed by transferring any of the above-mentioned franchises to some other city on consent of the majority of the clubs of each Major League. Provided, further, that if either of the Major Leagues in changing its circuit shall choose a city in which a club of the National Association is located, such Major League shall then be required to pay to the League in the National Association, of which such city may be a member, the sum of $2,500. Provided, further, that when a Major League shall change its circuit and choose a city in which a
59 club of the National Association is located, such club shall be compensated for any assets that it may have by the club desiring to locate in such city; and upon failure of the interested clubs to agree upon such compensation, the matter shall be determined by arbitration, the arbitration committee to consist of three members, one of whom shall be the Chairman of the Commission, one a representative of the Major League other than the one desiring to locate in such city, and the third a representative of the National Association. The finding of a majority of said committee shall be final.

Section 2. The party of the second part hereby guarantees that none of the leagues in its membership shall establish or maintain a club in a city on the circuit of either Major League, or within or five miles of the limits thereof, without the consent in writing of the Major League or leagues, located therein, and recorded in the office of the Secretary of the National Commission, Jersey City excepted.

Section 3. National Agreement players are prohibited from participating as individuals or as a team in an exhibition game in a city under protection before, during or after the playing season of the league entitled to that territory without the consent of the club or clubs, representing such city.

## Article VI.

Section 1. All parties to this Agreement pledge themselves to recognize the right of reservation and respect contracts between players and clubs under its protection. No club operating under this Agreement shall at any time negotiate for the purchase or lease of the property of another club without first securing the consent of such club.

Section 2. Any club or league which harbors a player who refuses to observe his contract with a club member of any party to this Agreement, or to abide by its reservation, shall be considered an outlaw organization, and its claim to contractual and territorial rights ignored.

Section 3. The right and title of a Major League Club to its players shall be absolute and can be terminated only by release, neglect to comply with requirements under this Agreement for reservation, or failure to fulfill its contractual obligations. When a Major League Club serves notice of release on a player, not secured within that or the preceding year from a Minor League Club by it or another Major League Club, he shall be ineligible to contract with a club of another league, if, during 10 days after service of notice of release, a club of the league in which he is at the time playing shall demand his services.

Section 4. The practice of farming is prohibited. All right or claim of a Major League Club to a player, unless it be under an optional agreement approved by the Commission, shall cease when such player becomes a member of a Minor League Club, and no arrangement between clubs for the loan or return of a player other than by an optional agreement shall be binding between the parties to it, or recognized by other clubs.

Section 5. The National Association shall have the classification of its leagues and the adoption of a salary limit for its clubs according to such classification, and it agrees to withdraw protection from any league which allows any of its clubs to exceed the salary limit prescribed for leagues of its classification; provided, however, that the International League, the American Association and the Pacific Coast League shall be "AA" Leagues, and that no league shall be admitted to this classification in the future unless the minimum population of the cities in such league circuit is 1,750,000; and provided, further,

that the National Association shall be restricted in the adoption of its maximum salary limits to the following amounts for individual players in the leagues of the several classifications:

Class AA..... $—per month.
A ..... $—per month.
B ..... $—per month.
C ..... $—per month.
D ..... $—per month.

[NOTE.—The amounts fixed are unknown to the plaintiff, but will be shown at the trial.]

61 Permission in exceptional cases may be secured from the National Commission to pay salaries in excess of the amounts above enumerated.

Section 6. The right of a Minor League Club to its players under this Agreement shall be absolute except that from September 15th to September 20th of each year each Major League Club shall have the privilege of selecting players from the National Association Clubs for the following season upon payment of the following sums:

$2,500 for players selected from Class AA.
1,500 for players selected from Class A.
1,200 for players selected from Class B.
750 for players selected from Class C.
500 for players selected from Class D.

The payments shall be made in full at the time when the selection is made through the Secretary of the National Commission to the Secretary of the National Association, who shall be required to furnish to the Commission an approved bond of the amount of the aggregate draft money of that year, for the faithful delivery of such draft money to the clubs entitled to it. The Commission is empowered to adopt rules providing for the manner of determining the title to a player selected by more than one Major League Club; provided, however, that when one or more clubs from each Major League files a selection for the same player, it shall first be determined by lot which league shall be awarded the preference in his selection.

The Class AA drafting season shall commence two days after the expiration of the Major League drafting season and continue for five days. Each classification below Class AA shall be granted five days in which to draft players, two days intervening between the period of each classification.

Clubs of Class AA Leagues shall pay for drafts of players as follows:

Class A..... $1,000
B..... 750
C..... 500
D..... 400

62 Section 7. The sale of the release of a player by a Minor League Club to a Major or Minor League Club within thirty days of the commencement of or during the drafting period is prohibited. At any other time a Major League Club may purchase the release of a player from a Minor League Club to take effect at once or at a specified date. Provided, however, that if the selling club be a member of a league in Class AA, delivery of the player, unless he shall have been secured by it under an approved optional agreement, permitting his retention to the close of the season, must be made forthwith. The sale of a player's release by one Minor League Club to another shall be null and void against the selection of the player by a Major League Club from the selling club, unless he be in the actual service of the purchasing club for thirty days before the opening of the drafting season for Major League Clubs. All purchase agreements, whether for the immediate or prospective release of a player, to which a Major League Club is a party, shall be in the form prescribed by the Commission and forwarded to its secretary for record and promulgation within five days after execution. Purchase agreements between Minor League Clubs shall be in the form adopted by the National Board and filed with its Secretary within five days after execution for promulgation. The number of players of a National Association Club subject to selection in the same year is fixed as follows: By Major League Clubs, one from each Class AA Club, and one from each Class A Club; by Class AA, one from each Class A Club, from which a Major League draft for that year was not filed and allowed; and one from each Class B Club; by Class A Clubs, one from each Class B Club. From all other clubs and in all other cases, the number of players eligible to draft is unrestricted.

Section 8. Any Major League Club entitled to make selection of a player, and desiring to do so, shall between September 15th and September 20th notify the Secretary of the National Commission, stating the name of the player and of the club to which he is
63 under contract and reservation, and inclosing the amount specified in a preceding section to be paid for such release or draft. The Secretary shall certify each selection by a Major League Club to the Secretary of the National Association, who shall thereupon immediately notify the club and league from which such selection is made, and shall order the transfer of the player to the selecting club at the close of the current season. Such selection and transfer shall thereupon be promulgated.

Section 9. A Major League Club shall not be permitted to sell the release of a selected player until he has been actually in its service before the close of the season in which he was drafted or during the following training or regular season, and then only after waivers to him have been obtained from all other Major League Clubs and notice has been received from the Secretary of the National Board that no National Association Club has claimed him at the draft price. Such notice shall not be valid unless filed with the Secretary of the Commission within ten days after notification has been served on the Secretary of the National Board of the purpose of the drafting club to release him. The right to claim such selected player at the draft

price paid for his release and on the conditions prescribed herein shall be exercised by National Association Clubs in the order of their classification, to wit: Class AA, Class A, Class B, Class C and Class D, except that Class A clubs shall have priority over Class AA clubs in claiming a player selected from a Class A club, Class AA to have second claim and the lower classes in their alphabetical order. When more than one club of the same class claims a selected player, the right to his services shall be determined by lot by the Secretary of the National Board. Within five days from the receipt of notice that such player has been released to it, the check of the claiming club shall be forwarded to the Secretary of the Commission for transmission to the releasing club. The club which claims a player selected from it shall be accorded the right to recall him over the claims of all other clubs in its own classification.

64 Section 10. The selection of a player made by a Major League Club under an arrangement with a Minor League Club for the return of the selected player after the expiration of the period of selection shall be void, and the Commission shall impose a fine of $500 on each club which becomes a party to a conspiracy to prevent a player from advancing in his profession, or in any way abuses the privilege of selection.

Section 11. A Major League Club shall not release a player within the year of, or the year following his purchase or selection from a Minor League Club until waivers on him have been obtained from all other Major League Clubs in accordance with rules of the Commission in force at that time. Clubs of the league of the club soliciting waivers on such player shall have the preference in his allotment, and if such player be a purchased player, the club seeking waivers may retain him although he be claimed. If he be a drafted player, he shall be at once released to the claiming club adjudged to be entitled to him. The waiver price of a purchased player shall be fixed by negotiations between the interested clubs, and in the event of their inability to agree, by the Commission, whose decision shall be final of a drafted player, the amount paid for his selection, plus $250.

Section 12. A Major League Club shall have the privilege of cancelling its draft of a Minor League player before the expiration of the Major League drafting period.

## Article VII.

Section 1. On or before the 1st day of October in each year the Secretary of each party to this Agreement shall transmit to the Secretary of the Commission a list of all players under contract to each of its club members on that date or at the close of the championship race of its league, whom such club desires to retain for the following season, together with those secured for future service by purchase or draft or while free agents and those under suspension for

65 insubordination or other cause, as well as those ineligible for refusal to respect reservation by or contract with such club for that or a preceding season. The Secretary of the Commission shall

reupon promulgate all of such lists which conform to the limita-
n of the reservation privileges of clubs according to rank and clas-
ation as shown in Section 3 of Article VI, and no player thus
mulgated as reserved shall be eligible to contract or play with any
ional Agreement Club other than that on whose list his name
ears as a reserved player until he is regularly released by the
erving club.

Section 2. No club shall be permitted to reserve a player while in
ears of salary to him, and the failure of a club to tender a reserved
ver a contract for the ensuing season by February 1st shall be
strued as a revocation of its reservation, and shall operate as his
onditional release. Provided, however, that if the reserved player
ll have been secured by a Major League Club from a Minor League
b by purchase or selection for future service, the tender of a pro-
ionary contract covering the first 45 days of the next playing
on, in accordance with Section 1, Article VIII, shall protect the
erving club's right to him.

Section 3. The number of players a Major League Club may have
its service and under its control from May 15 to August 20 of
h year shall not exceed 25. The annual reservation list of a
jor League Club shall not include more than 35 names, exclusive
the manager and players promulgated as ineligible. No Major
gue Club shall have title to more than 35 players at any time,
lusive of the manager and of ineligible players, unless this limit
exceeded through the exercise of the draft, in which case the ex-
number of players shall be disposed of prior to the filing of the
's reservation list.

Every Minor League Club is restricted in the number of players,
lusive of the manager and ineligible players it may have on or
with its teams, as follows:

Class AA shall not have more than 30 players under con-
tract or reservation at any time, which number must be re-
ed to 20 players within 30 days after the opening of the season
he 25th day of August of each year.

lass A. For 20 days after opening of season, 28 players; there-
r, 18 players until August 25th.

lass B. For 20 days after opening of season, 26 players; there-
r, 16 players until August 25th.

lass C. For 20 days after opening of season, 24 players; there-
r, 14 players until August 25th.

lass D. For 20 days after opening of season, 22 players; there-
r, 14 players until August 25th.

## Article VIII.

ection 1. All contracts between clubs and players in the Major
gues shall be in form prescribed by the Commission. All con-
ts between clubs and players in the National Association shall be
orm prescribed by that Association. Provided, however, that no
-reserve contract shall be entered into by any club operating under
National Agreement until permission to do so has been first ob-
ed from the Commission when such contract concerns a Major

League player, or from the National Board of Arbitration of the National Association when such contract concerns a player of that organization. In either event, the Secretary of the Commission must be immediately notified that such permission has been received, and such contracts must be at once promulgated by him with the proper notation of such permission. Provided, further, that the term of the first contract between a Major League Club and a drafted or purchased player shall be for 45 days, and such player's salary shall not be over 25 per cent in excess of that paid by him by the Minor League Club from which he was secured, the amount to be established by affidavit from him and the president of the club from which he was obtained. If the player be not released to a Minor League Club on the expiration of the probationary period of 45 days, a regular
67 contract between him and his club, fixing his compensation at a sum agreed on by them, shall be immediately executed and recorded.

Section 2. Any agreement between club and player for service, evidenced by written acceptance, whether by letter or telegram, or receipt from player for money advanced to him to bind such agreement, shall be construed to be a contract and held to be binding, provided the player declines to enter into a formal contract; but his refusal to sign such formal contract shall render him ineligible to play with the contracting club for more than a period of ten days, or to enter the service of a club of any party to this Agreement unless released.

Section 3. When a player of a Major or a Minor League Club shall be suspended for a stated period, or indefinitely, in accordance with his contract and the constitution and by-laws of the league of which his club is a member, the Secretary of such Association shall give notice of such disqualification to the Secretary of the Commission, who shall at once promulgate the same, and such disqualified player shall not be eligible to play with or against the club of any party to this Agreement until such disqualification shall have been removed and notice of such revocation promulgated by the Secretary of the Commission.

Section 4. In all cases before it for adjudication, the Commission shall have the right to require affidavits from parties in interest and other witnesses, and may demand the production of documentary evidence. Failure to submit a statement, when required, or to furnish testimony under oath or affirmation or documentary evidence by a party in interest, within such time as may be specified by the Chairman of the Commission, shall result in the award of the case against the delinquent party, and the infliction of such penalty as the Commission may deem adequate.

Section 5. A player suspended by a club or league for a term longer than ten days shall have the right of appeal to the Commission, which is given authority to order his reinstatement if it deems the punishment excessive or not merited.

68 Article IX.

Section 1. The Secretary of the Commission, who shall act as Treasurer in addition to his other duties, shall furnish a sufficient bond for the faithful performance of his duties and the safekeeping of all moneys which come into his custody in the administration of his office. He shall keep the minutes of each meeting, and preserve a correct record of all contracts, releases, reservations, selections, suspensions and reinstatements of players, and shall provide himself with an official stamp for certifying the time of receipt by him of all official documents.

Section 2. On the receipt of a notice of selection, he shall note upon it in ink the amount of money accompanying it, the date and hour of its arrival, and adopt every precaution possible to prevent complications over the priority in time of the filing of selections of players, by different clubs, and the club which first registers its selection of a player with the Secretary, as provided herein, shall be entitled to the services of such player. Provided, that all drafts for players received by the Secretary of the Commission on or before 9 o'clock A. M. of the first drafting date shall be considered as having been received at the same time. Drafts received after that time shall be noted as provided in Article IX, Section 2, of the Agreement, excepting that the time of the receipt of a draft by telegram shall be evidenced by receiving time noted thereon at the telegraph office.

Section 3. The Chairman shall prepare and promulgate all decisions and rulings of the Commission, unless he assigns the duty to another member.

Section 4. The expenses of the Commission, in excess of its revenue from games conducted under its auspices and from all other sources, shall be paid by the Major Leagues, share and share alike.

Section 5. All questions before the Commission may be determined by a mail vote of its members.

69 Article X.

Section 1. Every league shall strictly enforce the provisions in its constitution against open betting on its grounds, and club officials are required to cause the arrest and prosecution of those who engage in the practice.

Section 2. No game or series of games shall be played for a stake between clubs of any party to this Agreement, nor shall any player of a club accept or agree to accept a sum of money or present of great value as an inducement or reward for special effort on his part in winning or trying to win a game.

Original Agreement adopted September 11, 1903. (Amended from time to time.)

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By THOS. J. LYNCH,
*President, and*
THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By B. B. JOHNSON,
*President.*
THE NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES,
By M. H. SEXTON,
*President.*

70 PLAINTIFF'S EXHIBIT B.

International League:

Newark,
Rochester,
Baltimore,
Montreal,
Providence,
Toronto,
Buffalo,
Jersey City.

American Association:

Milwaukee,
Minneapolis,
Louisville,
Columbia,
St. Paul,
Cleveland (formerly Toledo),
Kansas City,
Indianapolis.

Pacific Coast League:

San Francisco,
Oakland,
Sacramento,
Los Angeles,
Venice,
Portland.

71 Southern Association:

Atlanta,
Mobile,
Birmingham,
Chattanooga,
Montgomery,
Memphis,
Nashville,
New Orleans.

Tri-State League:

Wilmington,
Allentown,
Harrisburg,
York,
Trenton,
Atlantic City.

Central League:

Grand Rapids,
Fort Wayne,
Springfield,
Dayton,
Terre Haute,
Evansville.

Northwestern League:

Vancouver,
Portland,
Seattle,
Victoria,
Tacoma,
Spokane.

New York State League, consisting of the principal county seats in New York State.

72 Eastern Association, consisting of eight principal cities in New England States, excepting Boston, including such cities as New Haven and Springfield.

New England League, consisting of eight cities such as Portland, Fall River, Lowell and other towns of similar size in the New England States.

Indiana-Illinois-Iowa League, consisting of

Quincy,
Dubuque,
Davenport,
Danville,
Decatur,
Springfield,
Bloomington,
Peoria.

And various other similar smaller leagues of six or eight clubs in the locality generally indicated by the title of the League, namely:

Southern Atlantic League,
Northern League,
Virginia League,
Western Illinois League,
Southern Michigan Association,
Western Tri-State League,
Appalachian League,
North Carolina League,
Texas-Oklahoma League,
Kansas State League,
Michigan State League,
Nebraska State League,
Border League,
Western Canada League,
Union Association,
New York and New Jersey League,
73 Central Association,
Cotton States League,
Illinois-Missouri League,
Empire State League,
Kentucky-Indiana-Tennessee League,
Ohio State League,
Georgia-Alabama League,
New Brunswick-Maine League,
Western League.

74 PLAINTIFF'S EXHIBIT C.

*Agreement.*

Made Between National Agreement Leagues, Clubs, and Players, on the 6th Day of January, 1914.

At a conference, held in the City of Cincinnati, on January 6, 1914, the National Commission, representing the National and American Leagues, a Committee of the National Association of Professional Baseball Leagues and a Committee of the Baseball Players'

Fraternity, each and all of said representatives having full authority to act for and in behalf of their respective organizations and the individual members thereof, agreed to the following changes in and modifications of the existing rules and practices, governing the relations of members of the Baseball Players' Fraternity with National Agreement Clubs and Leagues:

First. When a Major League player receives a ten days' notice of unconditional release, or when a Class AA or Class A player receives a five days' notice of unconditional release, he shall be free to sign with any team immediately, the contract to run from the expiration of his notice of release. Provided, however, that no Major League, Class AA or Class A player shall be unconditionally released before waivers have been secured upon him from all the clubs of the classification of the releasing club; and provided further that when a player is transferred by one team to another, in the same classification, it shall be at the salary and under all of the conditions set forth in the player's contract at the time of his transfer.

Second. Class AA and Class A players shall receive five days' notice in writing before they shall be released unconditionally.

Third. The salary of a player transferred to a lower classification, in case there is a dispute over the same, shall be adjusted by the National Commission if he be a Major League player, and by the National Board of Arbitration, if he be a Minor League player, who shall have the right to appeal from the finding of the Board to the Commission.

Fourth. No club shall transfer the services of a player to any other club without furnishing to the player in writing all of the conditions under which the transfer is made, and showing what club, if any, has claim to the player's services and what that claim is.

Fifth. When a player receives his unconditional release, he shall be notified in writing to that effect. It is further understood that the National Commission, the National Board and the Fraternity will take every further precaution to prevent the abuse of the waiver rule.

Sixth. Every player shall be furnished with a copy of his contract with his club, and his copy shall be considered an original.

Seventh. There shall be printed in red ink and large type on all contracts the following notice, the only change to be made therein being the substitution of the words "minor league" for "major league" and the insertion of the words "or its authorized agent," after the word "president," when such contract is a Minor League contract, and in this latter class of contracts instead of a fine of $500 a fine of $100 shall be assessed against the manager and a fine of from $100 to $300 assessed against the club, according to classification:

"*Important Notice to Players and Club Presidents.*

"Every player before signing a Major League contract should carefully scrutinize the same to ascertain whether all of the conditions agreed upon between the player and the club president have been incorporated therein, and if any have been omitted the player should insist upon having all the terms, conditions,

promises and agreements inserted in the contract before
same. If at any time, as the result of an official inves
ascertained that an agreement of any kind between a
club president and a player is not fully set forth in
regular contract or made a part thereof, then a penalty
flicted against the club violating this provision in the su
the same to be paid into the treasury of the league of w
tracting club is a member, and the said contract shall
void and the player unconditionally released."

Eighth. Every club shall furnish each player with
uniforms, exclusive of shoes. The player shall make
$30.00 therefor, which shall be returned to him at th
season or the termination of his contract, upon the sur
uniforms by him to the club. The words "complet
shall be construed to mean two pairs of trousers, two shi
two caps, stockings as required and a coat or sweater.

Ninth. Every Major League club shall pay the play
expenses, including Pullman accommodations and me
from his home city to the training place of the club,
player be ordered to go there direct or by way of the
the club is located, or to the point at which the players
to assemble for its training trip. Every club in the N
ciation shall pay the actual traveling expenses of its
their respective homes to the training camp, or so mu
does not exceed the traveling expenses from the city
club is located to its training camp.

Tenth. If a regular contract be not tendered to a
player, who makes a written request therefor, before t
of the forty-five days' probationary period, he shall be
conditional release.

Eleventh. A player, who has been in the Major Lea
portion of the playing season of ten different years,
his unconditional release, subject, however, to r
77 the club which signs him, if at any time after t
of the tenth year the club to which he is then u
does not desire to retain him and waivers on him are sec
other Major League clubs.

Twelfth. A player who has been in the Major and
leagues for any portion of the playing season of fifteen di
shall receive his unconditional release, subject, howeve
tion by the club which signs him, if at any time after t
of the fifteenth year no team in such leagues desires his
waivers on him have been secured from all other Class

Thirteenth. A player who is in the service of a Major
for part of a season only shall receive such proportion o
salary, or of the monthly salary multiplied by six, state
tract, as the number of days of actual employment bears
ber of five days in the season, or the number of days
plus the additional number of days for which the pl
provided he be not held more than six months from t
of the season.

Fourteenth. A player who is fined or suspended by a club shall be given notice thereof in writing, stating the amount of the fine or the duration of the suspension and the reason therefor.

Fifteenth. No league or club shall discriminate against any player because of his connection with the Baseball Players' Fraternity.

Sixteenth. Every Major, Class AA and Class A league park shall be equipped with a blank wall painted dark green, placed back of a center field in line with the pitcher's plate and home plate, of sufficient size to form a background for pitched balls.

Seventeenth. Before a Major League player shall be released outright or under an optional agreement to a club of a lower classification, waivers must be secured upon him from all other Major League clubs; and when a Major League Club refuses to waive and the price cannot be agreed upon between the two clubs, it shall be fixed by the National Commission.

Eighteen. Before a Major League player shall be released outright or under an optional agreement to Class A or a lower classification, his services shall first be tendered to all Class AA clubs at a price not to exceed $1,000, and then to all Class A clubs at a price not to exceed $750. If he be a drafted player, the club from which he is drafted shall have prior claim to all other clubs in its classification.

Nineteenth. Before a Class AA player shall be released outright or under an optional agreement to a classification lower than Class A, waivers shall first be secured from all other Class AA clubs at a price not to exceed $1,000, and then the player tendered to all Class A clubs at a price not to exceed $750.

Twentieth. Before a Class A player shall be released outright under an optional agreement to a lower classification, waivers shall be secured from all other Class A clubs at a price not to exceed $750.

Twenty-first. This agreement shall be in full force for the season of 1914 and thereafter, with the exception of Paragraphs Third and Twelfth, which shall be subject to revision or modification at the request of either party after the expiration of one year from the time of entering into this agreement, and shall be as effective and enforceable as though fully set forth in each player's contract, whether said contract was entered into before or after said conference or the date of the adoption of this agreement. The provisions of this agreement shall take precedence over any conflicting baseball legislation or clause of a player's contract.

THE NATIONAL COMMISSION,
*(Duly Authorized Agent of the National and American Leagues).*
By AUGUST HERRMANN,
*Chairman.*
THE NATIONAL ASSOCIATION,
By M. H. SEXTON,
*President.*
THE BASEBALL PLAYERS' FRATERNITY,
By DAVID L. FULTZ,
*President.*

79 PLAINTIFF'S EXHIBIT D.

*Rules and Regulations Governing the National Commission.*

As Revised and in Force January 1, 1914.

Rule 1. In addition to the regular and special sessions provided for in Section 2, of Article IV, of the National Agreement, the Commission may meet for the transaction of business at any time and place unanimously agreed on. The Chairman shall mail or wire notice of regular and special meetings forty-eight hours in advance thereof to the address of each of his associates, stating the time and purpose of such meeting.

Rule 2. The order of business at meetings of the Commission shall be as follows:

1. Roll Call.
2. Reading of Minutes of preceding meeting and action thereon.
3. Election of Officers.
4. Reports of Officers.
5. Reports of Committees.
6. Unfinished business.
7. Miscellaneous and New Business.
8. Adjournment.

Rule 3. The Chairman and Secretary, each of whom in addition to submitting an annual report of his official acts at the January meeting of the Commission, shall keep a record and present a detailed statement of the current affairs of his office at all other meetings. They are respectively authorized to create liability for such incidental or other expense as may be necessary for the proper
80 discharge of their duties. The Chairman's report at the January meeting shall include such review and recommendations as he may deem advisable.

Rule 4. The Secretary shall have charge of all records, documents and other papers of the Commission not required in the consideration of a case; promulgate all rulings and other acts of the Commission, when directed to do so by its Chairman; promptly bulletin contracts, releases, suspensions of all Major League players, and drafts or purchases of Minor League players by Major League Clubs; keep a roster of the officers of each party to the Agreement, together with a list of all Leagues, the membership of each, the address of its League and Club presidents, and the past and present club connections of every National Agreement player.

Rule 5. Acting as Treasurer, the Secretary shall be custodian of all funds of the Commission and shall disburse money only on the warrant of the Chairman, and the receipt of the party entitled to it, except sums received by him for the draft or release of Minor League players, which shall be promptly forwarded to and receipted for by the Secretary of the National Association, and all other amounts entrusted to him for a specific purpose or paid by the direction of the Commission. His records shall show the name of each drafted or purchased Minor League player, the club from which he was secured

and that obtaining title to him, the amount paid, as well as the time of the receipt and disbursement of the sum involved, and the date of the receipt thereof by the party entitled to it, or the Secretary of the National Association.

Rule 6. Whenever, in the judgment of its Chairman, additional funds are required to meet the obligations of the Commission, an equal assessment for that purpose shall be levied on each Major League.

Rule 7. Every finding and ruling of the Commission shall be reduced to writing, signed by the member or members on whom the duty devolves, and recite the reasons on which its conclusions are predicated. The original shall be filed with the Secretary, a letter-press imprint retained by the Chairman and copies thereof furnished by him to the Secretary for transmission to every party involved, and also to the President of each Major League, the Secretary of the National Association, and leading news agencies for promulgation. All documentary evidence considered in the hearing of a case, except contracts or agreements, copies of which shall be obtained and the original returned to the party entitled to them, shall be preserved by the Secretary with the signed finding. A certified copy of a finding or any other document in his custody shall be forwarded to an applicant for it by the Secretary on the payment of a reasonable fee.

Rule 8. Notice by letter or telegram of a draft unaccompanied by the amount specified in Section 6, Article VI, of the Agreement shall not be considered until such amount has been received, and the time of filing of such draft shall be noted by the Secretary to be the time of the actual receipt by him of the required amount.

Rule 9. When one or more clubs of each Major League file notice of selection of a player from the same Class "AA" or Class "A" club at the same time," the names of such clubs shall be placed in a hat and the first drawn therefrom shall be entitled to draft a player from such Class "AA" or Class "A" club. In the event of the waiver of cancellation of such draft, the other clubs in the order in which their names were drawn from the hat shall have the privilege of selection from such Class "A" or Class "AA" club. This procedure shall be followed when all of the selecting clubs are of the same Major League.

Rule 10. When a notice of the selection of the same eligible player of a club of lower classification than Class "A" is filed by a club of the same or of opposite Major Leagues, the names of the qualifying drafting clubs shall be put in a hat, and the player shall be awarded to the club whose name is on the first slip drawn therefrom.

Rule 11. When a player drafted by a Minor League club does not report it, he shall not be subject to draft until he has been in the service of such Minor League club for at least one-half of a season.

Rule 12. The transfer of a player by or to a Major League club for immediate or future delivery shall not be valid unless under an agreement in form prescribed by the Commission, containing all the conditions of such transaction, signed by the President of each interested club, or its authorized agent, as certified to and recorded with

the Secretary of the Commission, accompanied by the amount of the consideration, payable to the releasing club, or written acknowledgment of its receipt, and approved and promulgated by the Chairman of the Commission. No agreement or arrangement for the transfer of a player for a financial consideration or in a trade will be recognized or enforced by the Commission unless in writing, and submitted within a reasonable time after its negotiation to the Chairman of the Commission for record.

Rule 13. The release of a player by a Major League club to a Minor League club under an agreement conferring on the releasing club the right to recall such player, or to claim another player, shall be approved by the Chairman of the Commission if the regulations in Rule 12 are complied with, under the following conditions:

(*a*) The consideration shall not be less than $300, receipt of which shall be acknowledged, or the award to the releasing club of the right to claim the released player or one or more players in lieu of him from the club granting the option, on the 15th day of August of the year in which such option is to be exercised.

(*b*) A Major League club will be permitted to release for a subsequet season, under optional agreement, two, but not more of its players who have been recalled under optional agreements.

(*c*) Unless stipulated in the agreement that he shall continue with the club securing his service until the close of its playing
83 season, the player shall report to the club exercising its option by August 15th of the year of such agreement.

(*d*) If the club accepting a player under an optional agreement does not desire to retain him, it may release him to another club, subject to such option, but before such player may be released outright, the Major League club holding the option shall be given three days' notice of such intention, and on its failure to at once recall the player, with the consent of the Commission, its right to reclaim him under the option agreement shall be forfeited, and the player shall become a free agent. The Minor League club's responsibility for the salary of a player accepted by it under an optional agreement shall cease at the expiration of the three days' notice to the Major League club of its intention to release such player.

(*e*) A purchased Major League player who has participated in a game and been regularly waived on may be released before September 15th of the year of its execction under an optional agreement, exercisable on August 15th of the following year. Such player shall, however, be subject to draft in the year of his release under such option, regardless of the approved optional agreement by a Major League club or a Minor League club of higher classification than that in whose service he is after August 26th.

Rule 14. When a Major League club releases a player on whom it has previously exercised an option and repurchases his services, such player must report to the purchasing club on or before August 15th following such repurchase, or be subject to selection from the Minor League club with which he is playing after that date.

Rule 15. A club which exercises an option on a player's services shall be responsible to him for any arrearage in salary to him from

he club from which he is recalled, which shall be repaid to the club
ettling the player's claim before protection shall be renewed to the
ity of the defaulting club.

Rule 16. A player recalled under an option shall not be entitled to salary beyond the season of the releasing club from
84 the club reclaiming him unless he reports to it and enters its service by its direction.

Rule 17. The following regulations will be observed by the Commission in determining the contractual obligations between clubs and players and the reservation privileges of clubs:

(*a*) A non-reserve clause in the contract of a Major League player without the approval of the Commission, or of a Minor League player without the approval of the National Board, shall not be valid.

(*b*) Claims of players for arrearage in salary against National Association clubs will not be considered by the Commission, except on appeal from the decision of the National Board. The amount of a Club's indebtedness to its players shall become a lien against the city it represents, and protection shall not be extended to it until such salary debts are settled.

(*c*) A contract "for the season" without specifying dates signed by a player after the adoption of a schedule of the league of which his club is a member is binding for the full term of such schedule, although the league may subsequently shorten it.

(*d*) A club which before or after the beginning of the term of its contract with him releases the services of a player to a club whose championship season commences after that of the releasing club must pay him at the rate of his canceled contract from the time it would have become effective, but for his release up to the day his salary starts with his new club, provided he promptly reports to and gives service to the club to which he is transferred. This section shall be construed with Rule 18 of the National Commission.

(*e*) The validity of an informal contract, arrangement or agreement between a club and player for the future service of the latter will not be recognized unless the written evidence thereof, as required by Section 2, Article VIII, of the National Agreement, is submitted to the president of the interested club's league, if a Major League, or
85 to Secretary Farrell, if a Minor League, for promulgation in the next official bulletin of that party to the Agreement and for certification to the Secretary of the Commission for record.

(*f*) A free agent who contracts with a National Agreement Club and is released by it, without a trial, or after entering its service, without his consent to another club during the life of that contract, shall be declared a free agent if the club to which he is released does not assume the salary his original contract called for to the close of its term.

(*g*) A Major League club which released a player to a Minor League club within fifteen days to the end of the latter's championship season will be required to pay him his full salary under his Major League contract for the rest of its term at the time of his release, less the amount of salary he could earn with the club to which he was released in case he reported forthwith to such club.

(*h*) In order that the attention of players may be called to this rule, the Secretary of the Commission is required to publish the same in two papers, devoted to baseball, twice each year.

Rule 18. After the required waivers are secured, a Major League club which releases a player who is actually in its service to any club under the National Agreement shall, at the time of notifying such player of his release, deliver to him a railroad and sleeping-car ticket, if the latter is required, to the city designated by the club securing him, which shall forthwith reimburse the releasing club for such transportation. The releasing club shall, thereupon, be liable only for that portion of the ten days' salary due the released player under its contract with him represented by the difference between the amount of his salary under such contract and the sum which he would have earned during that period had he promptly reported to the club to which he was released.

Rule 19. A National Agreement player, adjudged to have violated his contract, shall be declared and promulgated to be disqualified to play with or against any club under the National Agreement
86 until reinstated on his application by the Commission, if he be a Major League player, or by the National Board, if he be a Minor League player. If, after full investigation, the tribunal having jurisdiction finds that such violation of contract was premeditated and without palliating circumstances, the application of the offender for reinstatement will not be considered until the player has given satisfactory assurance that he will not repeat the offense, and will not be granted without the imposition of an adequate penalty.

Rule 20. A player who fails to report to or deserts the club having title to his services shall be declared and promulgated to be disqualified as a National Agreement player until restored to good standing on his application by the Commission, if a Major League player, or by the National Board, if a Minor League player. In all cases of failure to report or desertion the offender may be reinstated with or without a fine, in the discretion of the tribunal having jurisdiction, provided, however, that if the player shall have joined an outlaw team his application for the removal of his disability shall not be acted on within three years after the commission of the offense.

Rule 21. May 1st and October 29th of each year the President of each Major League and the Secretary of the National Association shall report to the Chairman of the Commission the name of any player in his respective organization who has violated his contract, refused to report or deserted his team, together with the date and details of his offending, for promulgation. The Major League club neglecting to notify its President, or the Minor League club failing to report to the Secretary of the National Association such offenders prior to the date prescribed, shall be filed $50.00 for each omission. As soon after each of these dates as practicable, the Commission shall promulgate a list of ineligible players. A fine of $25 shall also be imposed on any club that disposes of a player offending under this rule or Rule 19 before his reinstatement.

Rule 22. Every provision of a finding of the Commission must be

promptly and fully complied with by all interested parties.
87 No case will be reopened except on an application for a rehearing, stating in condensed form the grounds on which the reopening is requested, filed in writing with the Commission within ten days after the promulgation of such finding.

Rule 23. A fine of $25.00 shall be imposed on any National Agreement club that permits a player to play on its team for a longer period than that prescribed in Section 2, Article VIII, of the agreement, without a formal contract, and the right to reserve such player will not be recognized.

Rule 24. When an agreement entered into between two Major League clubs or a Major and a Minor League club relative to the purchase or arrangement for the draft of a player is not *bona fide*, the parties to such illegal agreement shall be punished for the first offense as follows:

| | |
|---|---|
| Major League clubs, fine of | $1,000.00 |
| Class AA clubs, fine of | 750.00 |
| Class A clubs, fine of | 500.00 |
| Class B clubs, fine of | 400.00 |
| Class C clubs, fine of | 300.00 |
| Class D clubs, fine of | 200.00 |

For the second offense protection shall be withdrawn from offending clubs for a period of six months, and their players shall not be subject to reservation until such clubs are restored to the privileges of the Agreement.

Rule 25. No National Agreement player may leave the service of his club to become a club owner, or manager of another National Agreement club, whether he does or does not participate in games with such club, unless he shall have secured his release from the club having title to his services. Should such player and his club be unable to agree upon the conditions of his release, the Commission shall determine the amount if he is a Major League player, and the National Board, if he is a Minor League player.

Rule 26. To retain title to a player who fails to report to or leaves the service of the club having title to him, such club is not
88 required to tender a contract to the player on or before the first day of February of each year, as provided in the Agreement, but shall carry his name on its reservation list from year to year. The name of a player who has violated his contract shall not appear on the reservation list of a club.

Rule 27. The Secretary of the National Association shall furnish to the Secretary of the Commission the full name and address and the salary of every Minor League player who advances to a Major League club within five days after the transfer of such Minor League player.

Rule 28. Every National Agreement player who before, during or after the championship season shall participate in a game with or against a club harboring ineligible players, or controlled by ineligible players, shall be punished for the first offense and become ineligible until restored to good standing. Every National Agree-

ment club which negotiates or contracts with a player who has violated this rule before his reinstatement shall be fined $200.00. Before the infliction of such fine the player or club shall be given a full hearing by the Commission, if the accused belongs to a Major League, or by the National Board, if the party charged belongs to a Minor League. A fine imposed for this offense shall be paid into the treasury of the Commission if inflicted on a Major League club or player, and into the treasury of the National Association when inflicted against a Minor League Player or club.

Rule 29. Interleague waivers on the services of a purchased or repurchased player, as required by Section 11 of Article VI of the National Agreement, shall not be requested prior to November 15, unless such player has been under contract to and in the actual service of the club applying for waivers. Waivers on the services of a drafted player may be asked at any time, but such player shall not be released within a year of his selection to a Minor League club until he has been under contract to and in the actual service of the releasing Major League club during the regular or training season.

89 Interleague waivers, which may be requested at any time, shall be secured on every Major League player other than a drafted or a purchased player before he shall be released to a club of lower classification, clubs of the league of the club soliciting waivers to have the preference in his allotment. Such player, if claimed, may be retained by the club applying for waivers on withdrawal of its waiver request within two days after receipt of notification of such claim. The waiver price of a player other than a drafted player shall be fixed by negotiations between the interested clubs or, in the event of their failure to agree, by the National Commission, whose decision shall be final.

On receipt of a request for interleague waivers from the president of the league of the club seeking the same, the president of the opposite Major League shall, within seventy-two hours, if the request be received during the championship season, or within five days at all other times, either waive claims to such player or negotiate for his services in behalf of the club claiming him in accordance with the terms prescribed by Section 11, Article VI, subject, however, to priority in right of any club of the league of the club asking for waivers to his services. The time limit within which interleague waivers can be exercised will begin to run from the time designated as the receiving time at the telegraph office of the city where the headquarters of the opposite Major League is located, with the proviso that telegrams received on Sunday or after 12 o'clock noon Saturday shall be considered as received on the following Monday at 9 o'clock, if such Monday is not a holiday; and that all telegrams which are received on holidays shall be considered as received at 9 o'clock on the day following such a holiday, when such following day is not a Sunday, and that where the time limit expires on Sunday it shall be extended until the following Monday.

Rule 30. In the event of the death or permanent incapacity of a purchased player while in the service of the releasing club, or prior to his reporting to the club acquiring title to him in the training or

championship season, the agreement covering his release shall
90 be null and void, and the party of the first part thereto shall forthwith return to the party of the second part all or any of the consideration received for his release, whether it be in money or the release of one or more players, and the purchasing club shall be relieved from all obligation for payments that have not matured.

Rule 31. After the list of reserved players has been promulgated by the Secretary of the Commission, in accordance with Section 1, Article VII, of the Agreement, all omissions and errors therein must be reported by clubs within fifteen days after such promulgation to the Secretary of the Commission, who shall on or before November 1st of each year thereupon promulgate a revised list containing the names of all purchased and drafted Major League players. A player whose name is not on such revised list shall be considered a free agent, and be permitted to negotiate with any club under the Agreement.

Rule 32. A National Association club which, in accordance with Section 9, Article VI, of the National Agreement, has claimed a player drafted by a Major League club shall have the privilege of canceling such claim at any time by giving notice thereof to the Commission through the office of the Secretary of the National Board. If a player on whom a claim is cancelled shall also have been claimed by one or more clubs of lower classification than the club relinquishing its claim, the Secretary of the National Association shall forthwith determine which of such clubs is entitled to claim him. The club to which he is allotted shall thereupon be entitled to his services on the payment of the draft price to the selecting club before he may be released during that season to any other Minor League club, provided, however, that if the claimed player be tendered to the claiming club before notice of cancellation of its claim is filed with the Secretary of the National Association, such club shall be required to pay the claiming price forthwith, unless the interested Major League club shall waive it and elect to retain the player. The Major League
club that observes this rule shall be considered to have fully
91 complied with the provisions of this section and article of the National Agreement, and may release the services of the drafted player to any club it may see fit.

Rule 33. A Major League club whose players, exclusive of manager and disqualified players, under contract to it, with those whose services have been purchased or who have been recalled under optional agreements, total thirty-five on September 15th, will be debarred from the privilege of draft for that year. A Major League club whose total number of players is less than thirty-five on the opening day of the draft period will be allowed to exercise the right of selection; but, if through awards by draft, its list exceeds thirty-five players, the excess number must be disposed of prior to the filing of its reservation list on or before October 1st of that year.

Rule 34. An appeal from a finding of the National Board will not be considered by the Commission unless notice thereof is served within thirty (30) days after the promulgation of the decision to which the appellant excepts. When a ruling of the National Board directs a club or player to do or omit to do a particular act within a

prescribed time, the right of appeal to the Commission will not be recognized until every requirement has been complied with. If the decision complained of be reversed by the Commission on appeal, the rights and interest of all parties affected will be fully protected.

Rule 35. The Commission may by a majority vote at any time adopt additional rules and modify or repeal those in force.

Rule 36. A Major League player shall not be released outright or under an optional agreement to a club in Class "A" or a lower classification until interleague waivers have been first obtained on him, as provided in Rule 29, and such player has been tendered to all Class "AA" clubs, at a price not to exceed $1,000 and, if such release be to a club below Class "A," to all Class "A" clubs at a price not to exceed $750.

Provided, however, that Rule 32 shall be observed in the release of a drafted player within the year of his selection. To pre-
92 vent delay from tendering such player to Class "AA" and Class "A" clubs, the president of the Major League soliciting interleague waivers shall at the same time notify the Secretary of the National Association to ascertain by wire from Class "AA" and Class "A" clubs having the privilege of claiming him which club or clubs desire him, and to telegraph his report to the president of the league of the club requesting waivers within seventy-two hours after the receipt of such notification.

If the player be claimed by more than one club in the same classification, the releasing club shall have the privilege of deciding which of the claiming clubs shall secure his services, Class "AA" clubs to have the priority.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*

93 *Plea of The American League of Professional Base Ball Clubs and Others.*

Filed November 24, 1917.

* * * * * * *

Now come the defendants, The American League of Professional Base Ball Clubs, The Greater New York Base Ball Association, The Boston American League Base Ball Club, American Base Ball Club of Philadelphia, The Washington American League Base Ball Club, The American League Base Ball Club of Chicago, The St. Louis American League Base Ball Company, The Detroit Base Ball Company, The Cleveland Ball Club Company and Bancroft B. Johnson, by their attorney, Benjamin S. Minor, and for plea to the declaration filed in the above entitled cause, and each count thereof, they and each of them say not guilty as therein alleged.

BENJAMIN S. MINOR,
*Attorney for Above-named Defendants.*

*Plea of The National League of Professional Base Ball Clubs and Others.*

Filed November 24, 1917.

* * * * * * *

Now come the defendants, The National League of Professional Base Ball Clubs, National Exhibition Company (of New York), Brooklyn Base Ball Club, Philadelphia Ball Company, Boston National League Base Ball Company, Chicago League Ball Club, American Base Ball and Athletic Exhibition Company of St. Louis, Missouri, Pittsburgh Athletic Company, Cincinnati Exhibition Company, John K. Tener and August Herrmann, by their attorneys, George W. Pepper, Samuel M. Clement, Jr., and Benjamin S. Minor, and for plea to the declaration filed in the above entitled cause, and
94 each count thereof, they and each of them say not guilty as therein alleged.

GEORGE W. PEPPER,
SAMUEL M. CLEMENT, JR.,
BENJAMIN S. MINOR,
*Attorneys for Above-named Defendants.*

*Joinder of Issue on Plea of The American League of Professional Base Ball Clubs and Others.*

Filed December 10, 1917.

* * * * * * *

The plaintiff joins issue on the plea of The American League of Professional Base Ball Clubs, The Greater New York Base Ball Association, The Boston American League Base Ball Club, American Base Ball Club of Philadelphia, The Washington American League Base Ball Club, The American League Base Ball Club of Chicago, The St. Louis American League Base Ball Company, The Detroit Base Ball Company, The Cleveland Ball Club Company, and Bancroft B. Johnson filed herein.

CHAS. A. DOUGLAS,
MARBURY, GOSNELL & WILLIAMS,
L. EDWIN GOLDMAN,
*Attorneys for Plaintiff.*

*Joinder of Issue on Plea of The National League of Professional Base Ball Clubs and Others.*

Filed December 10, 1917.

* * * * * * *

The plaintiff joins issue on the plea of The National League of Professional Base Ball Clubs, National Exhibition Company (of New York), Brooklyn Base Ball Club, Philadelphia Ball Company, Bos-

ton National League Base Ball Company, Chicago League Ball Club, American Base Ball and Athletic Exhibition Company of St
95 Louis, Missouri, Pittsburgh Athletic Company, Cincinnati Exhibition Company, John K. Tener and August Hermann filed herein.

CHAS. A. DOUGLAS,
MARBURY, GOSNELL & WILLIAMS,
L. EDWIN GOLDMAN,
*Attorneys for Plaintiff.*

*Memorandum.*

April 12, 1919.—Verdict for plaintiff for $80,000.00.

Supreme Court of the District of Columbia.

Friday, May 16th, 1919.

Session resumed pursuant to adjournment, Hon. Hendell P. Stafford, Justice presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record, and defendants' motion filed May 5th, 1919, for leave to amend the "record," so called, being the stenographer's minutes of the trial, being submitted to the Court and considered is hereby, overruled. Defendants' attorney of record Mr. Minor, requests an exception to the action of the Court on said motion, which is hereby noted.

Upon consideration of the motion for a new trial filed herein on behalf of the defendants by their attorneys of record, and heretofore submitted, it is now ordered that said motion be, and the same is hereby overruled.

Thereupon, plaintiff's attorneys move for judgment for threefold the damages assessed by the jury, for costs of suit and a reasonable counsel fee, which is granted.

Wherefore, it is considered that the plaintiff recover against the defendants The National League of Professional Baseball
96 Clubs, National Exhibition Company (of New York), The Brooklyn Ball Club, The Philadelphia Ball Company, The Boston National League Baseball Company, The Chicago League Ball Club, American Baseball & Athletic Exhibition Company of St. Louis, Missouri, The Pittsburgh Athletic Company, The Cincinnati Exhibition Company, The American League of Professional Baseball Clubs, The Greater New York Baseball Association, The Boston American League Baseball Club, American Baseball Club of Philadelphia, The Washington American League Baseball Club, American League Baseball Club of Chicago, The St. Louis American League Baseball Company, The Detroit Baseball Company, The Cleveland Ball Club Company, August Herrmann, Bancroft B. Johnson and John K. Tener, the sum of Two Hundred and Forty Thousand Dol-

lars ($240,000.00) with interest from this date and costs of suit to be taxed by the clerk and have execution thereof.

To the action of the Court in rendering such judgment, defendants' attorney, Mr. Minor, requests an exception, which is hereby noted.

From the foregoing the defendants by their said attorney of record, Mr. Minor, in open court, note an appeal to the Court of Appeals of the District of Columbia; whereupon, the penalty of a bond to operate as a supersedeas, is hereby fixed in the sum of Three Hundred and Fifty Thousand Dollars.

*Memorandum.*

June 4, 1919.—Supersedeas Bond approved and filed.

67 Supreme Court of the District of Columbia.

Wednesday, June 4th, 1919.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice presiding.

* * * * * * *

Upon motion of defendants' attorney of record Mr. Minor, the penalty of a bond for costs on the appeal heretofore noted in this cause is hereby fixed in the sum of One Hundred Dollars ($100.00), with leave to deposit the sum of Fifty Dollars ($50.00) with the clerk, in lieu thereof.

*Memoranda.*

June 4, 1919.—$50 deposited in lieu of appeal bond.

June 16, 1919.—Time to submit Bill of Exceptions extended to and including July 28, 1919.

July 17, 1919.—Notice to Attorneys for Plaintiff of time of submission of Bill of exceptions to the Court.

July 24, 1919.—Time to submit Bill of Exceptions extended to and including October 8, 1919.

October 6, 1919.—Time to submit Bill of Exceptions extended to and including November 8, 1919.

68 November 5, 1919.—Time to submit Bill of Exceptions extended to and including December 15, 1919.

December 5, 1919.—Time to submit Bill of Exceptions extended to and including January 15, 1920.

January 7, 1920.—Time to submit Bill of Exceptions extended to and including March 10, 1920.

99 *Assignments of Error.*

Filed February 3, 1920.

* * * * * * *

I.

The Court erred in overruling defendants' motion made at the close of all the evidence to direct a verdict for the defendants. (Bill of Exceptions page 733.)

II.

The court erred in overruling defendants' objections to the question asked by plaintiff on direct examination of the witness L. Edwin Goldman as to what was the total cost to the plaintiff club of the construction of its park and stands, and the preparation of its grounds, the basis of said objection being that the original cost of the structure is not an item of damage in a claim laid under the 7th section of the Sherman Act, or the measure of the value of the premises at the time of the alleged injury. The question is what injury, if any, was done by the defendants to the business of the plaintiff, and the amount of damages in the case of a business venture depends upon the productive use of the plant at the time the damage was done. Evidence as to cost would tend to mislead the jury if it were considered independently of the question whether or not
100 the use made of the amount so invested was a productive one. (Bill of Exceptions page 78.)

III.

The court erred in overruling defendants' objection to the question asked by plaintiff on direct examination of the witness Frank Otto Knabe: Q. "How does that salary of $10,500 for three years compare with the salaries which had been previously paid to men of that class of players?", and to the evidence proffered. (Bill of Exceptions page 182.)

IV.

The court erred in overruling defendants' motion to strike from the Declaration, on the ground of duplicity and inconsistency with the averments appearing on subsequent pages, the following paragraph thereof:

"That immediately upon the entry of said The Federal League into the business of baseball, the defendants, representing organized baseball as an entirety, and particularly the defendants, Hermann, Johnson and Tener, contracted, combined or conspired together, in violation of the statutes aforesaid and the common law, to injure or destroy the business of the said The Federal League, and of its con-

stituent members, and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in baseball among the several States, and repeatedly announced publicly and privately, through the press and to individual players considering entering into contracts with the constituent members of the Federal League, that the said League and its constituent members were financially irresponsible and
101 would not be able to perform their contracts, and would not be able to continue in the business for such length of time as to enable them to play out their schedules of games as a League of major importance; and the said defendants, or some of them, likewise threatened that any player who was or had ever been a member of any club in Organized Baseball, who should contract with any of the constituent members of The Federal League, including the plaintiff, should thereafter be barred from ever playing in Organized Baseball; that each and every of said statements, and each and every of said threats were made for the purpose of harrassing and injuring the plaintiff and the other constituent members of The Federal League, and for the further purpose of deterring the players within the combination of Organized Baseball from, at any time or under any circumstances, entering into contracts with the plaintiff, or any other of the constituent members of the said The Federal League; and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of The Federal League; and for the purpose, if possible, by such means of destroying the said The Federal League, and ruining its constituent members and thereby eliminating competition with said Organized Baseball." (Bill of Exceptions pages 216-'7.)

V.

The court erred in overruling defendants' objection to the introduction in evidence by plaintiff of copy of article appearing in the New York Evening Sun of March 5, 1914, identified by deponent Joseph Vila, and purporting to be an interview with the defendant Byron Bancroft Johnson, defendants' objection being based upon the grounds (1) that the said article was offered in evidence
102 as tending to prove the averment in the declaration which charges a conspiracy by some of the defendants against other of the defendants who could not have been parties to such conspiracy; (2) that the article does not refer to the plaintiff club, but to the Federal League, a corporation in which the plaintiff club was a stockholder; and (3) that, with the exception of that paragraph of the Declaration set forth in Assignment of Error IV, which defendants moved should be stricken from the Declaration for duplicity and inconsistency, there was no allegation in the Declaration respecting which the article offered in evidence could be probative. (Bill of Exceptions pages 216-'7.)

## VI.

The court erred in sustaining the objection of plaintiff to th question asked by defendants on cross examination of the witne Carroll W. Rasin, whether at the meeting between representativ of the Federal League and of Organized Baseball held at the Waldor Astoria on the evening of December 17, 1915, any one in his hearin stated that the committee of the Federal League, consisting of Gi more, Weeghman and Sinclair, had full authority to negotiate wit Organized Baseball for a major league franchise and also for a Pea Agreement, counsel for defendants stating that the question put w not one as to whether there was authority from the plaintiff club Mr. Rasin and Mr. Janney to act for that club, but whether the d fendants here charged with having conspired against the plaint club had or had not reasonable grounds for supposing that the ge tlemen with whom they were conferring represented their r
103 spective organizations and had the necessary authority to co fer; that it is permissible on cross examination to show that th witness, who testified on direct examination that he had no authori whatever to commit his club, went to the conference, allowed it be asserted in his hearing by his then associates that they had fu authority to act for all parties, and without contradiction allowed th defendants to proceed on the supposition that they were dealing wi persons authorized to commit their constituents; that the question whether the defendants are guilty of a criminal conspiracy, whic they cannot be if the plaintiff agreed to the things of which it no complains; that if there was no express assent to what is now co plained of it is proper to bring out the fact that a situation ar where if there was no authority to represent the plaintiff club th fact should have been stated, because if a man is silent when it is h duty to speak he cannot afterwards complain of those who act upon the assumption that the statement as made in his hearing u corrected by him was a true one; that it was desired to have the cou and jury draw whatever inferences are proper from the failure of wi ness to assert at the meeting referred to what he now testifies to be th fact. (Bill of Exceptions page 228.)

## VII.

The court erred in sustaining the objection of the plaintiff to th question asked by defendants upon cross examination of the witne Carroll W. Rasin, in which question reference was made to what th witness had said in his testimony about the absence of authority commit the plaintiff club and he was asked whether he recall
104 that at the conference Mr. Stuart S. Janney was introduced Mr. Herrman with the following statement: "Mr. Sinclair h informed me that there is a representative from the Baltimore Fe eral League Club that would like to be heard." (Bill of Exceptio page 229.)

## VIII.

The court erred in sustaining the objection of plaintiff to the question propounded by defendants on cross examination of the witness Carroll W. Rasin, the witness' attention having been directed to the paragraph of the Declaration reading: "That on or about the 5th day of January, in the year 1915, The Federal League of Professional Baseball Clubs, of which the plaintiff was and is a constituent member, brought its Bill of Complaint, in the United States District Court for the Northern District of Illinois, Eastern Division, setting out substantially the matters and facts hereinabove set forth, and praying an injunction against the further prosecution of the illegal acts of the defendants herein and all of them, and for other relief as in equity should seem meet. And said Bill of Complaint was at the time of the events hereinafter detailed, still pending, but has since been dismissed with the consent of the parties thereto, the right of this plaintiff to bring this action for damages having been expressly reserved by Order of the Court granting said dismissal. And, thereafter, and while said Bill of Complaint aforesaid, was pending, the said Defendants out of the moneys acquired by said organizations by the illegal practices hereinabove set forth, have actually bought the assets of certain of the constituent members of The Federal League of Professional Baseball Clubs for the purpose of controlling them and stopping them from engaging in the business of professional baseball, and the said Defendants have succeeded in their illegal scheme and conspiracy, and contrary to the Anti-trust Statutes of the United States have removed them from further participation in said competition with the said defendants; and, by means of persuasion and cash contributions, have induced other members of the said The Federal League to enter said conspiracy, and to become parties to said National Agreement, and to acquire franchises in said American or National League," and asked to state whether the averments therein contained correctly represented the witness' understanding of the facts. (Bill of Exceptions pages 230-'1.)

## IX.

The court erred in sustaining the objection of plaintiff to the question propounded by defendants on cross examination of the witness Carroll W. Rasin whether to the knowledge of the witness, the President of the plaintiff club, the statement as contained in the Declaration represented the position taken by the plaintiff club at the time this suit was instituted. (Bill of Exceptions page 232.)

## X.

The court erred in sustaining the objection of plaintiff to the question propounded by defendants upon cross examination of the witness Carroll W. Rasin, who was shown a copy of the declaration filed

in this cause and his particular attention directed to the pa
106 graph thereof quoted in Assignment of Error VIII, t
question excluded by the court being: Q. "Now that your a
tention has been called to it, will you state whether or not the av
ment that I have just summarized to you represents your und
standing of the fact?" (Bill of Exceptions page 233.)

XI.

The court erred in sustaining the objection of plaintiff to the qu
tion propounded by defendants on cross-examination of the witn
Edward Hanlon, who had testified that he had started out as a play
of professional baseball in Organized Baseball in 1876 at a salary
twenty dollars per week, that the highest salary he drew as a player
Organized Baseball was Three Thousand Dollars or Thirty-five Hu
dred Dollars, that between 1876 and 1892 he was a player in Orga
ized Baseball, and subsequent to 1892 was manager and player in O
ganized Baseball, the question excluded by the court being as follow
Q. "Supposing you had been working all this time that you ha
described under a Federal League contract which provides for a fi
per cent increase per annum, would your advance have been fina
cially as satisfactory as the advance which actually took place in O
ganized Ball?" (Bill of Exceptions page 257.)

XII.

The court erred in sustaining the objection of plaintiff to the qu
tion propounded by defendants on cross examination of the witn
Edward Hanlon: Q. "Will you tell us what you received as ma
ager at different times when you were working in the ranks of O
ganized Ball?" (Bill of Exceptions pages 257-8.)

107 XIII.

The court erred in sustaining the objection of plaintiff to the i
troduction in evidence in behalf of defendants of the stenograph
report of the minutes of the meeting held on December 17, 191
at the Waldorf-Astoria, New York City, between the representati
of Organized Baseball and of the Federal League, counsel for
fendants stating that the said minutes contained statements relev
to the issues before the court and jury, made in the presence a
hearing of the president of the plaintiff club, said minutes, a c
plete narrative of what occurred, being offered for the purpose
enabling the court and jury to draw such inferences as may be pro
from what appears to have been the silence of the representative
the plaintiff organization in the presence of the relevant statem
referred to. (Bill of Exceptions page 462.)

XIV.

The court erred in overruling the objection of defendants to t
question propounded by plaintiff on cross examination of the wit

ry B. Comstock as to what inducement the witness had in mind hereby he hoped to induce Organized Baseball to buy him out—at reason witness had to make him believe that by putting up what had characterized in his testimony as a bluff he could induce ganized Baseball to buy him out. (Bill of Exceptions page 559.)

XV.

The court erred in sustaining the objection of plaintiff to the ques-n propounded by defendants on direct examination of the fendant August Herrmann, as to what conferences he had had h representatives of clubs in the Federal League other than Balti-re, preliminary to his conference with the Baltimore representa-s on the afternoon of December 17, 1915, previous to the confer-e on the evening of that day at the Waldorf-Astoria, counsel for fendants stating that it was sought to bring out from the witness timony as to what, from the admissions of members of the Federal ague constituent clubs, were the conditions in their clubs at that e, as affecting the question whether or not the league was in a rishing condition or in some other condition than that, all as ring on the question of what it was that caused the ultimate dis-tion of the Federal League. (Bill of Exceptions pages 598-9.)

XVI.

The court erred in sustaining the plaintiff's objection to the ques-n propounded by defendants on direct examination of the defend-t Byron Bancroft Johnson: Q. "Will you, Mr. Johnson, tell us at substitute for organization could be adopted with the result keeping professional baseball alive as a business?", counsel for fendants stating the question presented being whether or not the nomic condition in baseball is one which is so dissimilar from the nomic condition in the field of industry and of commerce gen-lly as not to be susceptible of treatment by the same methods; that in every case in which the Sherman Act has been ap-plied the alternative has been between the conduct of the business in the form of combination, or highly organized ivity, and the free play of its several constituent parts as inde-ndent and autonomous units; that the Sherman Act is not appli-le to a case in which combination is not one of two possible ways which an industry or activity can be conducted, but is the only y in which that activity can be perpetuated; that the question ed of witness is simply whether there is an alternative possibility carrying on professional baseball, which, as it exists, might be alternative the law would require Organized Baseball to adopt. ill of Exceptions pages 655-6.)

XVII.

The court erred in sustaining the objection of plaintiff to the in-duction in evidence on behalf of defendants of the stenographic cord of the minutes of the meeting held on the evening of Decem-

ber 17, 1915, at the Waldorf-Astoria, New York City, between representatives of Organized Baseball and representatives of the Federal League, including Mr. Rasin and Mr. Janney of the plaintiff club, counsel for defendants stating that, irrespective of the question of authority of Mr. Rasin and Mr. Janney to commit the plaintiff club to the terms of the final agreement, the minutes were offered to show the participation of the president and attorney of the plaintiff club in the conference understood by all who were present as being a conference to negotiate a so-called peace agreement in some form, which if an illegal agreement then the conference and negotiation itself was an illegal transaction. (Bill of Exceptions pages 702-3.)

110 XVIII.

The court erred in granting plaintiff's prayer No. 2, and in instructing the jury in accordance therewith. (Bill of Exceptions page 734.)

XIX.

The court erred in granting plaintiff's prayer No. 3, and in instructing the jury in accordance therewith. (Bill of Exceptions page 734.)

XX.

The court erred in granting plaintiff's prayer No. 4, and in instructing the jury in accordance therewith. (Bill of Exceptions page 735.)

XXI.

The court erred in granting plaintiff's prayer No. 5, and in instructing the jury in accordance therewith. (Bill of Exceptions page 736.)

XXII.

The court erred in granting plaintiff's prayer No. 6, and in instructing the jury in accordance therewith. (Bill of Exceptions pages 736-7.)

XXIII.

The court erred in refusing to grant defendants' prayer No. 1, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 737.)

111 XXIV.

The court erred in refusing to grant defendants' prayer No. 2, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 737.)

XXV.

The court erred in refusing to grant defendants' prayer No. 3, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 738.)

XXVI.

The court erred in refusing to grant defendants' prayer No. 4, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 739.)

XXVII.

The court erred in refusing to grant defendants' prayer No. 5, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 740.)

XXVIII.

The court erred in refusing to grant defendants' prayer No. 6, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 740.)

XXIX.

The court erred in refusing to grant defendants' prayer No. 8, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 741.)

XXX.

The court erred in refusing to grant defendants' prayer No. 10, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 742.)

XXXI.

The court erred in refusing to grant defendants' prayer No. 12, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 743.)

XXXII.

The court erred in refusing to grant defendants' prayer No. 13, and in refusing to instruct the jury in accordance therewith. (Bill of Exceptions page 744.)

XXXIII.

The court erred in amending defendants' prayer No. 10, and in instructing the jury in accordance with such amendment. (Bill of Exceptions pages 744-5.)

XXXIV.

The court erred in its charge to the jury in so far as such charge emphasizes distinction between the plaintiff club and the Federal League, without supplementing such instruction by reference to the undisputed fact that Mr. Rasin was elected by the plaintiff club as a member of the Board of Managers of the Federal League, the central organization, which under the evidence had the management of the affairs of the Federal League as a whole, as distinguished from the particular interests of the constituent clubs thereof, the particular portion of the court's instructions to which exception was
113 taken by the defendant being as follows:

"You are to remember that in this case the plaintiff is not the Federal League nor its officers. The plaintiff is not Mr. Rasin nor Mr. Hanlon nor Mr. Goldman, nor any other officer of the Baltimore club. The plaintiff is the Baltimore club as a corporation, representing the rights of its stockholders. Consequently acts and sayings which might have prevented a recovery if the plaintiff had been some one else, had been Mr. Hanlon or Mr. Rasin or Mr. Goldman or Mr. Janney—cannot bind the corporation plaintiff and its stockholders, cannot prevent a recovery by the plaintiff if the plaintiff is otherwise entitled to recover, unless those acts are the authorized acts of the corporation. * * *

"So that the question is not whether the Federal League was injured in its property or business by unlawful acts of the defendants charged in the declaration, but whether the Baltimore club was so injured in its property or business." (Bill of Exceptions page 761.)

XXXV.

The court erred in allowing to plaintiff's attorneys the sum of $24,000 as attorney's fees, said sum being thirty per cent of the verdict found by the jury and excessive. (Bill of Exceptions page 763.)

BENJ. S. MINOR,
GEORGE WHARTON PEPPER,
*Attorneys for Defendants.*

Service of copy of the foregoing Assignments of Error acknowledged this 4th day of February, 1920.

DOUGLAS, OBEAR & DOUGLAS,
JO. V. MORGAN,
*Attorneys for Plaintiff.*

114 *Designation of Record.*

Filed February 3, 1920.

* * * * * * *

In the preparation of the transcript of record in this cause, to be filed in the Court of Appeals of the District of Columbia, the Clerk of the Court will please include the following:

1. Declaration (without exhibits).
2. Plea of the Defendants, The American League of Professional Baseball Clubs, The Greater New York Baseball Association, The Boston American League Baseball Club, American Baseball Club of Philadelphia, The Washington American League Baseball Club, American League Baseball Club of Chicago, The St. Louis American League Baseball Company, The Detroit Baseball Company, The Cleveland Ball Club Company and Bancroft B. Johnson.
3. Plea of the Defendants, The National League of Professional Baseball Clubs, National Exhibition Company (of New York), The Brooklyn Ball Club, The Philadelphia Ball Company, The Boston National League Baseball Company, The Chicago League Ball Club, American Baseball & Athletic Exhibition Company of St. Louis, Missouri, The Pittsburgh Athletic Company, The Cincinnati Exhibition Company, August Herrmann and John K. Tener.
4. Joinder of Issue.
5. Memorandum of verdict.
115 6. Judgment, with notice of appeal in open Court, and fixing amount of supersedeas bond.
7. Memorandum of filing of supersedeas bond.
8. Memorandum of orders extending the time for settling Bill of Exceptions.
9. Memorandum of settling Bill of Exceptions.
10. Defendants' Assignments of Error.
11. Defendants' Designation of Record on Appeal.

BENJ. S. MINOR,
GEORGE WHARTON PEPPER,
*Attorneys for Defendants.*

Service of copy of the foregoing Designation of Record acknowledged this 4th day of February, 1920.

DOUGLAS, OBEAR & DOUGLAS,
JO. V. MORGAN,
*Attorneys for Plaintiff.*

116 Supreme Court of the District of Columbia.

Wednesday, February 4th, 1920.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * * * *

Before Judge Stafford.

Come now the parties hereto by their respective attorneys of record; whereupon, defendants by their attorney submit to the Court, the Bill of Exceptions taken at the trial of this cause and pray that the same be signed and made of record, nunc pro tunc, which is hereby accordingly done.

117 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 116, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 60653 at Law, wherein The Federal Baseball Club of Baltimore, Incorporated, is Plaintiff and The National League of Professional Baseball Clubs, and Others are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 19th day of February, 1920.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
*Clerk.*
By W. E. WILLIAMS,
*Assistant Clerk.*

118 In the Supreme Court of the District of Columbia.

At Law. No. 60653.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED,
Plaintiff,

vs.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS et al.,
Defendants.

*Bill of Exceptions.*

Be it remembered that the above entitled cause came on for trial on March 25, 1919, before Mr. Justice Stafford and a jury regularly empanelled to try the cause. And thereupon, after the jury had been duly sworn, the plaintiff, to maintain the issues on its part joined, called as a witness L. EDWIN GOLDMAN, who, being first duly sworn, testified on direct examination as follows:

That he was born and raised in Baltimore, where he is now a lawyer, and was one of the incorporators of the plaintiff, The Federal Baseball Club of Baltimore, Inc., one of its first directors and a stockholder, and one of counsel for the company; that plaintiff was incorporated October 28, 1913; that the original charter was amended No-

vember 11, 1913, which amendment changed the par value of the stock from $100 to $10 a share and gave equal voting power to the preferred stock.

The witness identified certified copy of original certificate of incorporation, which was offered and received in evidence, and reads as follows, to-wit:

*Certificate of Incorporation.*

The Federal Base-ball Club of Baltimore, Incorporated.

This is to certify, That the subscribers, L. Edwin Goldman of Baltimore City, in the State of Maryland, Stuart S. Janney, of Baltimore County, in the State of Maryland, and W. Howard Hamilton, of Baltimore City, in the State of Maryland, all being of full legal
119 age, do hereby certify that we do, under and by virtue of the general laws of this State authorizing the formation of corporations, associate ourselves with the purpose of forming a corporation.

I. The name of the corporation is The Federal Baseball Club of Baltimore, Incorporated.

II. The purpose for which the said corporation is formed and the business or objects to be carried on and promoted by it are as follows:

(*a*) To operate and maintain a team or teams of professional baseball players in Baltimore or elsewhere and to purchase, acquire, lease, own, sell and manage base-ball grounds, grand-stands, club houses, theatres, play houses, gardens, roof gardens, opera houses and other places of amusement and to maintain, purchase or rent, hire, lease, sell, let, or otherwise acquire or dispose of buildings of structures for any of the purposes aforesaid, and generally to carry on the business of furnishing amusement to the public.

(*b*) To purchase or otherwise acquire the grounds, club houses and other buildings, properties, good-will, rights, easement, franchises, business and assets of every kind and description of any corporation, association, firm or individual carrying on any business which the corporation may be authorized to carry on; and to undertake, guarantee, assume and pay the indebtedness and liabilities thereof, and to pay for any such grounds, club houses, buildings, properties, good-will, rights, easements, franchises, business and assets so acquired in the stocks, bonds, or other securities or evi-
120 dence of debt of the corporation or otherwise as permitted by the laws of the State of Maryland.

(*c*) To acquire by purchase, subscription or otherwise, and to hold for investment or otherwise, or to use, sell or otherwise dispose of any stocks, bonds or other obligations of any corporation, and while the owner of such stocks, bonds, or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereon; to borrow money, and to issue notes and bonds, and to execute mortgages, deeds of trust or other forms of contract as security for the same; and to exercise in regard to all such notes, bonds, mortgages, deeds of trust and other contracts,

all rights, powers and privileges which natural persons may exercise.

(*d*) To hold, buy, sell, lease, mortgage, convey, develop, improve, and deal in base-ball grounds and other real estate in the City of Baltimore or elsewhere in the State of Maryland: to own, buy, construct, improve, lease, sell, remodel, and reconstruct club-houses and other structures and in particular to own, buy, sell, construct, reconstruct, lease, remodel and improve base-ball grounds and club-houses in the City of Baltimore or elsewhere in the State of Maryland for the purpose and convenience of conducting therein games of professional base-ball and other amusements.

(*e*) To carry on a wholesale or retail merchandise business, and to buy, sell, dispose of and generally to deal in goods, wares and merchandise.

In general to carry on any other business in connection with the objects and purposes aforesaid, whether manufacturing or otherwise, and with all the powers conferred by the laws of the
121 State of Maryland upon corporations or joint stock companies incorporated under the laws of the State of Maryland, and that the said corporation is formed upon the articles, conditions and provisions herein expressed, and subject in all particulars to the limitations relating to corporations which are contained in the General Laws of this State.

III. The principal office of said corporation will be located in the City of Baltimore, State of Maryland.

IV. We do further certify, That the aggregate of the capital stock of said corporation is Three hundred thousand dollars ($300,000), and that said capital stock is divided into three thousand (3,000) shares of the par value of One hundred dollars ($100) each.

Of the said authorized capital stock Fifteen hundred (1,500) shares thereof amounting to One Hundred and fifty thousand dollars ($150,000) shall be seven per cent (7%) preferred stock and Fifteen hundred (1,500) shares thereof, amounting to One Hundred and Fifty Thousand Dollars ($150,000) shall be common stock.

The fiscal year of said corporation shall end on the first day of November in each year and the holders of the preferred stock shall be entitled to receive when and as declared by the Board of Directors out of the surplus or net profits of the corporation for the year, dividends at the rate of seven per centum (7%) per annum. The dividends on the preferred stock shall be paid or declared and set apart out of the net earnings of the year before any dividends on the common stock shall be paid or declared and set apart, but said dividends on the preferred stock shall be non-cumulative and said preferred stock shall have no voting power, except upon a proposition to
122 sell the franchise of said corporation, in which event said preferred shares shall have equal voting powers with the common stock.

After dividends amounting to seven per cent (7%) shall have been paid upon the preferred stock out of the net profits for any year, the common stock shall be entitled to receive a dividend of seven per cent, after which the holders of the preferred stock shall be entitled

participate in the net profits for said year, as and when declared
d paid by the Board of Directors of said corporation, equally with
e common stockholders.

In the event of any liquidation, dissolution or winding up, whether
oluntary or involuntary, of the corporation, the holders of the pre-
rred stock shall be entitled to be paid in full, the par amount or
alue of their shares before any amount shall be paid to the holders
f the common stock and after the payment to the holders of the
referred stock of its par value, the remaining assets and funds of
e corporation shall be divided and paid to the holders of the com-
on stock according to their respective shares.

V. We do further certify, That the said corporation will be man-
ged by a Board of Eight Directors and that Carroll W. Rasin, L.
dwin Goldman, Gustav L. Stewart, John S. Wilson, Jr., Walter
atzenstein, Stuart S. Janney, George Schluenmes, Harry Goldman,
itizens of the State of Maryland, and actually residents therein, are
e names of those who shall act as Directors of the said corporation
r the first year or until their successors are duly chosen and
qualified.

23 In witness whereof, we have hereunto set our hands this
27th day of October, in the year nineteen hundred and
irteen.

L. EDWIN GOLDMAN.
STUART S. JANNEY.
W. HOWARD HAMILTON.

Witness:
DAVID A. RALSTON.

The witness identified, and there was introduced in evidence, cer-
ified copy of Amendment to Certificate of Incorporation, which pro-
ides in substance for the change of the par value of the shares from
100 to $10 per share, thereby increasing the number of shares of
apital stock authorized from 3,000 to 30,000, of which 15,000
hares, aggregating $150,000, was common stock, and 15,000 shares,
ggregating $150,000, was preferred stock; and also gave to the pre-
rred stock equal voting power with the common stock.

The witness further testified that there was a supplemental amend-
ent in 1914, increasing capital stock from $300,000 to $500,000;
hat the initial capital stock of $300,000 was divided into $150,000
referred stock and $150,000 common stock, which amounts were
ncreased to $250,000 of preferred stock and $250,000 of common
tock; that the amount of money actually raised and put into the
lub by the stockholders was $164,100, which was the cash paid for
hat amount of preferred stock; that additional amounts invested in
he enterprise were the loans by directors and by the bank, which
ggregated approximately $36,000 or $38,000; that there were also
nsatisfied obligations and general creditors of about $5,800 and to
all players of about $29,000.

That the stockholders of the club numbered approximately six
undred, who were citizens of Baltimore and different counties of the
State and in all walks of life, including wealthy bankers and quite a

number of very poor men who were modest contributors; that
124 Carroll W. Rasin, of Baltimore, was the president of the corporation; that Gustav L. Stewart, then in the coffee business in Baltimore and now in business in New York, was vice-president; that John S. Wilson, Jr., banker and broker in Baltimore, was treasurer during the first year and George Schleunes, also of Baltimore, treasurer of the American Coat Pad Co., was treasurer during the second year; that the secretary was witness' father, Harry Goldman, who was interested in the former Baltimore Club of the American League; that there were fifteen other directors, including the following: Stuart Janney, a lawyer and one of counsel for the club, and now a Lieutenant-Colonel in the Army in France; Philip L. Poe, banker and broker; Edwin Poe, vice-president of the Baltimore Trust Co., Edward Hanlon, an old baseball man and manager of the famous Orioles in 1894, 1895 and 1896; Walter Katzentstein, one of the proprietors of a department store; John J. Fahey, who operates a livery and undertaking business; Franklin P. Cator, president of Armstrong, Cator & Co., a wholesale millinery business; that there were not very many large subscribers, the stock being very well scattered and evenly divided.

That the Federal League was a corporation of Indiana, which was incorporated and operated a league during 1913 on a very small scale; that then the gentlemen interested in it decided to make it a major league, that is, a league of first importance, and undertook to place franchises in large cities, where there was real demand for highest grade of baseball; that such a franchise was offered to the people of Baltimore, which was accepted by Mr. Goldman in
125 October, 1913, and by him assigned to the club when it was incorporated; that the Baltimore Club in the first instance became a constituent member of the Federal League.

The witness identified certified copy of Articles of Association of the Federal League of Professional Base Ball clubs, which was offered and received in evidence, and reads as follows:

Articles of Association of the Federal League of Professional Baseball Clubs.

We, the undersigned, hereby associate ourselves together for the purpose of forming a corporation under the laws of the State of Indiana, authorizing the incorporation of voluntary associations, entitled

"An Act concerning the organization and perpetuity of voluntary associations, repealing all laws in conflict therewith, legalizing the organization of certain associations organized under former laws, and declaring an emergency"

approved March 9th, 1901, and all acts amendatory thereof or supplemental thereto, and to that end hereby make and adopt the following Articles of Association, to wit:

## Article I.

### Name.

The name of this Association shall be "The Federal League
126 of Professional Baseball Clubs."

## Article II.

### Capital Stock.

This Association is organized for pecuniary profit and the amount of its capital stock is fixed in the sum of Eight Thousand Dollars ($8,000.00) divided into Eighty (80) shares of the par value of One Hundred Dollars ($100.00) per share.

## Article III.

### Objects.

The objects for which this Association is organized, are:

To acquire by purchase, lease or otherwise hold, own, maintain and operate grounds, baseball parks, and other places for the presentation of baseball games and other amusements and entertainments, in the various cities and towns of the United States of America; and to produce and present, and license or permit others to produce and present therein and thereon competitive baseball games for the amusement and entertainment of the public, and other forms of amusement or entertainments, and to do any and all things incident to and necessary in the carrying out of the objects herein expressed.

### Plan of Doing Business.

The proposed plan of doing business is as follows:

It is proposed to organize or cause to be organized in certain cities of the United States of America, which shall be determined and designated by the Board of Managers of this Association,
127 baseball clubs and teams, not to exceed eight (8) in number, to represent such respective city in the playing and contesting of baseball games among themselves for supremacy and championship; to form such clubs into what is commonly called a league; to issue to each club or person composing said league a franchise or license upon such terms and conditions as may be prescribed by the by-laws of this Association, or fixed by the rules and regulations thereof, authorizing such respective clubs, franchise owners or licensees to operate and conduct competitive baseball games among themselves for the championship of the league, as per a schedule of games to be adopted by this Association, in parks, grounds or other places in said respective cities, owned, leased, or otherwise controlled by this Association; said games to be played and conducted under the

direction, management and control of this Association; and to offer and give such reward or prize to the winner of the greatest percentage of games so played during each season, as shall be determined by the Board of Managers of this Association; and to receive and collect from each club in such league a uniform percentage of the receipts of each club, which percentage shall be fixed and determined by the Board of Managers of this Association.

The corporate stock of the Association shall be divided among the owners of the respective clubs or franchise- in said league as follows.

Ten (10) shares of the capital stock to the owner of each franchise or his or its agent, trustee or representative, and such owner shall be required to pay therefor the par value of such stock: The
128 officers of the Association shall not have power to issue stock to any person, firm or corporation not the owner of a franchise or license to operate a baseball club in this league, nor to issue to any person more than ten (10) shares of such capital stock; and such franchise holder or licensee shall not have the right to sell or transfer said stock to any person, firm or corporation except to his or its successors in the ownership of such franchise or license, and then only upon and with the consent of the Board of Managers of this Association, the stock in this Association so owned and held as aforesaid shall not be entitled to participate in the profits and earnings of the Association unless the owner thereof shall have operated and conducted a baseball club and team in accordance with the stipulation and spirit of these Articles, the by-laws, rules and regulations of this Association and the franchise or license contract with this Association during the term *of* season from which such profits, dividends or earnings shall have accrued. If, at any time, any franchise holder in said league shall elect, having the right to do so without in any wise causing a forfeiture of his stock in this Association, as provided by contract, or the rules, regulations and by-laws of this Association, to withdraw from such league and this Association, then this Association shall have the right at any time thereafter upon payment and tender to the holder of such stock of the par value thereof, to redeem and cancel the same and to re-issue the same to a successor of such withdrawing franchise holder.

129 Article IV.

Names and Places of Residence of Incorporate Members.

The names and places of residence of each of the incorporating members are respectively as follows:

| | |
|---|---|
| William T. McCullough | Pittsburgh, Pa. |
| Charles L. Sherlock | Chicago, Illinois. |
| John A. Spinney | Cincinnati, Ohio. |
| James A. Ross | Indianapolis, Ind. |

## Article V.

### Principal Place of Business.

The principal place of business of this Association shall be in the City of Indianapolis, State of Indiana, with branch offices in the cities of Pittsburgh, Pennsylvania, Chicago, Illinois, Cleveland, Ohio, Cincinnati, Ohio and St. Louis, Missouri.

## Article VI.

### Term of Existence.

The term of existence of this Association shall be fifty (50) years.

## Article VII.

### Corporate Seal.

The corporate seal of this Association shall consist of a circular disk with the name of this Association inscribed around the outer edge thereof, together with the word "incorporated," and the word "seal" in the center thereof.

## Article VIII.

### Manner of Election of Officers.

The business and prudential concerns of this Association shall be managed conformably to its by-laws, rules and regulations by a Board of Managers selected or appointed in the following manner, to-wit:

On or before the first day of January of each year, commencing with the first day of January, 1914, each franchise holder as provided in article III hereof, shall select or appoint one manager to serve on said Board of Managers for one year from the first day of January or until his successor is selected and qualified, and to properly certify the name of such manager so selected to this Association on or before the said first day of January of each year.

In the event of the failure on the part of any franchise holder to so select or appoint a manager as herein provided, or in the event the managers thus selected do not aggregate the total number of managers provided for in Article IX hereof, then the stockholders of this Association shall by ballot elect such manager or managers not so selected or appointed as will complete the required number of managers, at the regular annual meeting of the stockholders to be held on the first Tuesday of January of each year.

In the event of resignation of any manager, the franchise owner from whom such resigned manager received his appointment shall

have the right to select and appoint his successor, provided such right is exercised within ten (10) days thereafter, otherwise, and in all other cases of resignation, the successor shall be selected by the remaining members of the Board of Managers by a ballot.

The officers of this Association shall be a President, Vice-President, Secretary and Treasurer, which officers shall be elected by ballot by the Board of Managers, which election shall be held immediately after the Stockholders' Meeting on the first Tuesday of January of each year, and such officers shall hold office for the period of one year from the date of their election, or until their successor- *is* elected and qualified.

131 Article IX.

Number of Managers or Directors and Names for First Year.

The number of managers who shall manage the prudential concerns and affairs of this Association shall be eight (8), and the names of those who are to manage such affairs for the first year are:

William T. McCullough, C. X. Zimmerman, Michael Kinney, Charles L. Sherlock, John A. Spinner, James A. Ross, John A. George, and John S. Powell.

In witness whereof the said incorporators have hereunto subscribed their names in triplicate this eighth day of March, 1913.

WM. T. McCULLOUGH.
CHAS. L. SHERLOCK.
JOHN R. SPINNEY.
JAMES A. ROSS.

132 The witness was then asked whether he regarded the baseball business as an art or an industry, and he replied that there are two sides of it; that his first experience with it was an art when he played baseball during his boyhood; that later he played at college and in one amateur Baltimore League; that he was a spectator of the professional game for the first time when he was nine years old in 1892, since which time he has probably taken more interest in baseball than any other form of human activity; that he has made an intensive study of the evolution and growth of baseball ever since 1892 and thinks he is familiar with the growth, development and evolution of professional baseball in the United States.

That baseball could be played by an independent club—and there are such clubs—and even though played for compensation would not be professional baseball in its strictest sense; that professional baseball carried on as a business means that there is a complete organization of a league of six, eight, or twelve clubs; that the reason for the league is that the club proprietors want the largest possible revenue, which can only be obtained by keeping the interest of the public at the highest pitch, which is done by having a league balanced with reasonable evenness, and a championship race, interest in which is tremendously added in Organized Baseball by the contest for the World's Championship, which is itself productive of tremendous in-

me; that the favorite size of a league is eight clubs; that the interest is kept up by the league race, and a league is absolutely necessary to provide a schedule and play the games regularly; that the league arranges a definite schedule, that for a major league ing longer usually than for a minor league; that in a major league eight clubs each club is scheduled to play 154 games from early pril to early October, 77 at home and 77 abroad; that of the 77 mes at home 11 are played with each of the seven other clubs, each b visiting each city of the league three times during the season, laying four games on each of two of such visits and three games one visit.

That professional baseball from the standpoint of the major league essentially interstate and intersectional; that a major league means e of the highest caliber and must necessarily embrace eight large ies, which in the American, National and Federal Leagues inluded practically eight different States, as ordinarily no State has er one or two large cities in it; that the National League has a cirit, and so has the American League, half of which is in the East d half in the west, so as to get intersectional competition; that e cities in the National League are Boston, New York, Brooklyn d Philadelphia in the East, and Cincinnati, Pittsburgh, St. Louis d Chicago in the West; that in the American League the eastern ies are Boston, New York, Philadelphia, and Washington, and e western cities are St. Louis, Chicago, Detroit and Cleveland, no o of these clubs being in the same State; that New York State has o clubs in the National League, as has also Pennsylvania; that dur- the first season of the Federal League the circuit included in the East, Buffalo, Brooklyn, Baltimore and Pittsburgh, and in 4 the West, St. Louis, Chicago, Kansas City and Indianapolis, and in the second year the Indianapolis franchise was transrred to Newark, N. J., Pittsburgh then becoming a western city; at the Federal League circuit embraced seven States; that it would absolutely impossible for a club to be unassociated with any other ub and conduct a professional baseball business.

That with respect to the history of the art and development of aseball from an unorganized to an organized state, there were at st independent clubs which played casual games with any competir; that this did not attract the investor and shrewd business men w that the proper thing to do was to organize leagues; that the first ajor league was organized about 1876; that in 1892 the National eague was the only major league in baseball and then had a circuit twelve cities, including in the East, Boston, New York, Brooklyn, hiladelphia, Baltimore and Washington, and in the West, Chicago, Louis, Cleveland, Louisville, Pittsburgh and Cincinnati, and so ntinued until 1899 when Washington, Baltimore, Louisville and eveland were dropped; that in 1901 the American Association, a inor league, subordinate to the National League in Organized Baseall, formerly operating in the middle West—in Detroit, Kansas ty, Chicago, Milwaukee and other cities—decided to make an effort establish a major league, and taking advantage of the natural deand for the sport in Washington, Baltimore and Cleveland, three

cities dropped by the National League, established a circuit includi
in the East, Baltimore, Washington, Boston and Philadelphia, a
in the West, Milwaukee, Detroit, Cleveland and Chicag
135 that this was the time of the bitter fight for recognition on t
part of the American League, of which Mr. Ban Johnson w
president, Mr. Lynch being then, witness thought, president of t
National League; that this war continued through 1901 and 190
suspended early in 1903, and terminated September 11, 1903, wh
the National Agreement was adopted.

By stipulation of counsel there was produced copy of the Nation
Agreement attached to the declaration filed in this cause, which w
offered and received in evidence, and reads as follows:

136 *The National Agreement for the Government of Professio*
*Baseball.*

Entered Into Between the National and American Leagues and t
National Association, at Cincinnati, September 11, 1903,
Changed, Revised, and in Force 1912.

This agreement made and entered into by and between The N
tional League of Professional Baseball Clubs and The Americ
League of Professional Baseball Clubs, known and designated here
as Major Leagues, parties of the first part, each with the other a
both, jointly and severally, with The National Association of Prof
sional Baseball Leagues, known and referred to herein as Min
Leagues, party of the second part, shall be styled the National Agr
ment, and shall have for its objects:

(1) Perpetuation of baseball as the national pastime of Ameri
by surrounding it with such safeguards as will warrant absolu
public confidence in its integrity and methods, and by maintaini
a high standard of skill and sportsmanship in its players.

(2) Protection of the property rights of those engaged in baseb
as a business without sacrificing the spirit of competition in the co
duct of clubs.

(3) Promotion of the welfare of ball-players as a class by develo
ing and perfecting them in their profession and enabling them
secure adequate compensation for expertness.

(4) Adoption of a uniform code of rules for playing baseball.

137 Article I.

Section 1. This Agreement shall be indissoluble except by t
unanimous vote of the parties to it, and if any of said parties, o
league or club member thereof, withdraws from it, or violates any
its fundamental principles, the party so withdrawing or offendi
shall be treated as the enemy of Organized Baseball.

## Article II.

Section 1. Each party to this Agreement retains the right to conduct its affairs and govern its players according to its constitution and by-laws, not in conflict with this Agreement.

## Article III.

Section 1. Whenever the Commission certifies to their respective presidents that in its judgment the playing rules require amendment, a joint committee of three representatives from each Major League shall meet on or before October 15th of the year in which such notice is served and adopt a code of rules to regulate the playing of the game of baseball for the ensuing season, a majority vote being required to adopt, revise or repeal a rule.

Section 2. The respective presidents of each Major League shall in person or by proxy annually prepare a schedule of games for each Major League for the ensuing pennant race, avoiding as far as possible conflicts in championship games in cities in which rival clubs are located. The schedules thus drafted shall be submitted to each Major League not later than the second week in February, of each year, and no alteration shall be made in any date or dates allotted herein without the concurrence of both Major League Presidents.

Section 3. Neither Major League shall give instructions to or impose restrictions on its representatives on the Committee on Rules or the Committee on Schedules as to the manner, methods or limitations under which their respective duties shall be discharged.

## Article IV.

Section 1. A commission of three members, to be known as the National Commission, is hereby created with power to construe and carry out the terms and provisions of this Agreement, excepting when it pertains solely to the internal affairs of a party to this Agreement. One member shall be the President of the National League and one the President of the American League. These two members shall meet on or before the first Monday of January in each year and elect by a majority vote a suitable person as the third member. The third member so chosen shall be the Chairman of the Commission for one year from the date of his election, and shall preside at all meetings. Each member shall have a vote on all questions which may come before it, except as hereinafter directed. A Secretary shall be elected yearly. The salary of the Chairman, Secretary and of all employees shall be fixed by the Commission from time to time. The other members of the Commission shall serve without compensation. Immediately after the election of a Chairman and Secretary, the Commission shall proceed with the transaction of such business as may come before it.

Section 2. Sessions of the Commission, in addition to the annual meetings on the first Monday in January of each year, and on the

first day of the drafting period of each year, shall be held at the
of the Chairman, or at the request of the other two members of
Commission.

Section 3. The National Commission shall have the power to
flict and enforce fines or suspensions, or both, upon any party to
Agreement, or any of its members, adjudged by it to have viola
the letter or spirit of this Agreement.

Section 4. Whenever a National League Club and an Ameri
League Club claim the services of the same player by selection, re
vation or contract, the right to said player shall be established
the decision of the Chairman of the Commission, who shall de
mine the case on the law and evidence without the aid of either
his associates. The same procedure shall be followed in
139 determination of any other issue between the Major Leag
or between Major League clubs of different leagues.

Section 5. Whenever a National League Club and a Minor Lea
Club cannot amicably arrange differences over a player, the te
mony shall be heard and the case adjudicated by the Chairman
the Commission and the representative of the American League.
the contention be between an American League Club and a Mi
League Club, the decision shall be made by the Chairman of the C
mission and the representative of the National League. If the Ch
man and the Major League member of the Commission entitled
a vote on any question arising between a Major and a Minor Lea
Club, shall not agree, the Chairman's finding shall determine
case.

## Article V.

Section 1. The circuit of each Major League shall consist of
following cities: National League: Boston, New York, Brookl
Philadelphia, Pittsburgh, Chicago, St. Louis and Cincinnati. Am
can League: Boston, New York, Philadelphia, Washington, Am
land, Detroit, Chicago and St. Louis. Neither Major League cir
shall be changed without the consent of the majority of the cl
of each Major League. It is further provided that there shall be
consolidation in any city where two Major League Clubs exist;
shall any club transfer or release its players for the purpose of
juring or weakening the League of which it is a member; provi
however, that the circuit of either Major League may be changed
transferring any of the above-mentioned franchises to some ot
city on consent of the majority of the clubs of each Major Lea
Provided, further, that if either of the Major Leagues in chang
its circuit shall choose a city in which a club of the National Asso
tion is located, such Major League shall then be required to pay
the League in the National Association, of which such city may
member, the sum of $2,500. Provided, further, that when a M
League shall change its circuit and choose a city in whic
140 club of the National Association is located, such club, shal
compensated for any assets that it may have by the club de
ing to locate in such city; and upon failure of the interested club
agree upon such compensation, the matter shall be determined

arbitration, the arbitration committee to consist of three members, one of whom shall be the Chairman of the Commission, one a representative of the Major League other than the one desiring to locate in such city, and the third a representative of the National Association. The finding of a majority of said committee shall be final.

Section 2. The party of the second part hereby guarantees that none of the leagues in its membership shall establish or maintain a club in a city on the circuit of either Major League, or within or five miles of the limits thereof, without the consent in writing of the Major League or leagues, located therein, and recorded in the office of the Secretary of the National Commission, Jersey City excepted.

Section 3. National Agreement players are prohibited from participating as individuals or as a team in an exhibition game in a city under protection before, during or after the playing season of the league entitled to that territory without the consent of the club or clubs, representing such city.

## Article VI.

Section 1. All parties to this Agreement pledge themselves to recognize the right of reservation and respect contracts between players and clubs under its protection. No club operating under this Agreement shall at any time negotiate for the purchase or lease of the property of another club without first securing the consent of such club.

Section 2. Any club or league which harbors a player who refuses to observe his contract with a club member of any party to this Agreement, or to abide by its reservation, shall be considered an outlaw organization, and its claim to contractual and territorial rights ignored.

Section 3. The right and title of a Major League Club to its players shall be absolute and can be terminated only by release, 141 neglect to comply with requirements under this Agreement for reservation, or failure to fulfill its contractual obligations. When a Major League Club serves notice of release on a player, not secured within that or the preceding year from a Minor League Club by it or another Major League Club, he shall be ineligible to contract with a club of another league, if, during 10 days after service of notice of release, a club of the league in which he is at the time playing shall demand his services.

Section 4. The practice of farming is prohibited. All right or claim of a Major League Club to a player, unless it be under an optional agreement approved by the Commission, shall cease when such player becomes a member of a Minor League Club, and no arrangement between clubs for the loan or return of a player other than by an optional agreement shall be binding between the parties to it, or recognized by other clubs.

Section 5. The National Association shall have the classification of its leagues and the adoption of a salary limit for its clubs according to such classification, and it agrees to withdraw protection from any league which allows any of its clubs to exceed the salary limit prescribed for leagues of its classification; provided, however, that the In-

ternational League, the American Association and the Pacific Coast League shall be "AA" Leagues, and that no league shall be admitted to this classification in the future unless the minimum population of the cities in such league circuit is 1,750,000; and provided, further, that the National Association shall be restricted in the adoption of its maximum salary limits to the following amounts for individual players in the leagues of the several classifications:

Class AA..... $—per month.
A ..... $—per month.
B ..... $—per month.
C ..... $—per month.
D ..... $—per month.

142 Permission in exceptional cases may be secured from the National Commission to pay salaries in excess of the amounts above enumerated.

Section 6. The right of a Minor League Club to its players under this Agreement shall be absolute except that from September 15th to September 20th of each year each Major League Club shall have the privilege of selecting players from the National Association Clubs for the following season upon payment of the following sums:

$2,500 for players selected from Class AA.
1,500 for players selected from Class A.
1,200 for players selected from Class B.
750 for players selected from Class C.
500 for players selected from Class D.

The payments shall be made in full at the time when the selection is made through the Secretary of the National Commission to the Secretary of the National Association, who shall be required to furnish to the Commission an approved bond of the amount of the aggregate draft money of that year, for the faithful delivery of such draft money to the clubs entitled to it. The Commission is empowered to adopt rules providing for the manner of determining the title to a player selected by more than one Major League Club; provided, however, that when one or more clubs from each Major League files a selection for the same player, it shall first be determined by lot which league shall be awarded the preference in his selection.

The Class AA drafting season shall commence two days after the expiration of the Major League drafting season and continue for five days. Each classification below Class AA shall be granted five days in which to draft players, two days intervening between the period of each classification.

Clubs of Class AA Leagues shall pay for drafts of players as follows:

Class A..... $1,000
B..... 750
C..... 500
D..... 400

143 Section 7. The sale of the release of a player by a Minor League Club to a Major or Minor League Club within thirty days of the commencement of or during the drafting period is prohibited. At any other time a Major League Club may purchase the release of a player from a Minor League Club to take effect at once or at a specified date. Provided, however, that if the selling club be a member of a league in Class AA, delivery of the player, unless he shall have been secured by it under an approved optional agreement, permitting his retention to the close of the season, must be made forthwith. The sale of a player's release by one Minor League Club to another shall be null and void against the selection of the player by a Major League Club from the selling club, unless he be in the actual service of the purchasing club for thirty days before the opening of the drafting season for Major League Clubs. All purchase agreements, whether for the immediate or prospective release of a player, to which a Major League Club is a party, shall be in the form prescribed by the Commission and forwarded to its secretary for record and promulgation within five days after execution. Purchase agreements between Minor League Clubs shall be in the form adopted by the National Board and filed with its Secretary within five days after execution for promulgation. The number of players of a National Association Club subject to selection in the same year is fixed as follows: By Major League Clubs, one from each Class AA club, and one from each Class A Club; by Class AA, one from each Class A Club, from which a Major League draft for that year was not filed and allowed; and one from each Class B Club; by Class A Clubs, one from each Class B Club. From all other clubs and in all other cases, the number of players eligible to draft is unrestricted.

Section 8. Any Major League Club entitled to make selection of a player, and desiring to do so, shall between September 15th and September 20th notify the Secretary of the National Commission, stating the name of the player and of the club to which he is
144 under contract and reservation, and inclosing the amount specified in a preceding section to be paid for such release or draft. The Secretary shall certify each selection by a Major League Club to the Secretary of the National Association, who shall thereupon immediately notify the club and league from which such selection is made, and shall order the transfer of the player to the selecting club at the close of the current season. Such selection and transfer shall thereupon be promulgated.

Section 9. A Major League Club shall not be permitted to sell the release of a selected player until he has been actually in its service before the close of the season in which he was drafted or during the following training or regular season, and then only after waivers to him have been obtained from all other Major League Clubs and notice has been received from the Secretary of the National Board that no National Association Club has claimed him at the draft price. Such notice shall not be valid unless filed with the Secretary of the Commission within ten days after notification has been served on the Secretary of the National Board of the purpose of the drafting club to release him. The right to claim such selected player at the draft

98

price paid for his release and on the conditions prescribed herein shall be exercised by National Association Clubs in the order of their classification, to wit: Class AA, Class A, Class B, Class C and Class D, except that Class A clubs shall have priority over Class AA clubs in claiming a player selected from a Class A club, Class AA to have second claim and the lower classes in their alphabetical order. When more than one club of the same class claims a selected player, the right to his services shall be determined by lot by the Secretary of the National Board. Within five days from the receipt of notice that such player has been released to it, the check of the claiming club shall be forwarded to the Secretary of the Commission for transmission to the releasing club. The club which claims a player selected from it shall be accorded the right to recall him over the claims of all other clubs in its own classification.

145 Section 10. The selection of a player made by a Major League Club under an arrangement with a Minor League Club for the return of the selected player after the expiration of the period of selection shall be void, and the Commission shall impose a fine of $500 on each club which becomes a party to a conspiracy to prevent a player from advancing in his profession, or in any way abuses the privilege of selection.

Section 11. A Major League Club shall not release a player within the year of, or the year following his purchase or selection from a Minor League Club until waivers on him have been obtained from all other Major League Clubs in accordance with rules of the Commission in force at that time. Clubs of the league of the club soliciting waivers on such player shall have the preference in his allotment, and if such player be a purchased player, the club seeking waivers may retain him although he be claimed. If he be a drafted player, he shall be at once released to the claiming club adjudged to be entitled to him. The waiver price of a purchased player shall be fixed by negotiations between the interested clubs, and in the event of their inability to agree, by the Commission, whose decision shall be final of a drafted player, the amount paid for his selection, plus $250.

Section 12. A Major League Club shall have the privilege of cancelling its draft of a Minor League player before the expiration of the Major League drafting period.

## Article VII.

Section 1. On or before the 1st day of October in each year the Secretary of each party to this Agreement shall transmit to the Secretary of the Commission a list of all players under contract to each of its club members on that date or at the close of the championship race of its league, whom such club desires to retain for the following season, together with those secured for future service by purchase or draft or while free agents and those under suspension for

146 insubordination or other cause, as well as those ineligible for refusal to respect reservation by or contract with such club for that or a preceding season. The Secretary of the Commission shall

thereupon promulgate all of such lists which conform to the limitation of the reservation privileges of clubs according to rank and classification as shown in Section 3 of Article VI, and no player thus promulgated as reserved shall be eligible to contract or play with any National Agreement Club other than that on whose list his name appears as a reserved player until he is regularly released by the reserving club.

Section 2. No club shall be permitted to reserve a player while in arrears of salary to him, and the failure of a club to tender a reserved player a contract for the ensuing season by February 1st shall be construed as a revocation of its reservation, and shall operate as his unconditional release. Provided, however, that if the reserved player shall have been secured by a Major League Club from a Minor League Club by purchase or selection for future service, the tender of a probationary contract covering the first 15 days of the next playing season, in accordance with Section 1, Article VIII, shall protect the reserving club's right to him.

Section 3. The number of players a Major League Club may have in its service and under its control from May 15 to August 20 of each year shall not exceed 25. The annual reservation list of a Major League Club shall not include more than 35 names, exclusive of the manager and players promulgated as ineligible. No Major League Club shall have title to more than 35 players at any time, exclusive of the manager and of ineligible players, unless this limit be exceeded through the exercise of the draft, in which case the excess number of players shall be disposed of prior to the filing of the club's reservation list.

Every Minor League Club is restricted in the number of players, exclusive of the manager and ineligible players it may have on or with its teams, as follows:

147 Class AA shall not have more than 30 players under contract or reservation at any time, which number must be reduced to 20 players within 30 days after the opening of the season to the 25th day of August of each year.

Class A. For 20 days after opening of season, 28 players; thereafter, 18 players until August 25th.

Class B. For 20 days after opening of season, 26 players; thereafter, 16 players until August 25th.

Class C. For 20 days after opening of season, 24 players; thereafter, 14 players until August 25th.

Class D. For 20 days after opening of season, 22 players; thereafter, 14 players until August 25th.

## Article VIII.

Section 1. All contracts between clubs and players in the Major Leagues shall be in form prescribed by the Commission. All contracts between clubs and players in the National Association shall be in form prescribed by that Association. Provided, however, that no non-reserve contract shall be entered into by any club operating under the National Agreement until permission to do so has been first obtained from the Commission when such contract concerns a Major

League player, or from the National Board of Arbitration of the National Association when such contract concerns a player of that organization. In either event, the Secretary of the Commission must be immediately notified that such permission has been received, and such contracts must be at once promulgated by him with the proper notation of such permission. Provided, further, that the term of the first contract between a Major League Club and a drafted or purchased player shall be for 45 days, and such player's salary shall not be over 25 per cent in excess of that paid by him by the Minor League Club from which he was secured, the amount to be established by affidavit from him and the president of the club from which he was obtained. If the player be not released to a Minor League Club on the expiration of the probationary period of 45 days, a regular
148 contract between him and his club, fixing his compensation at a sum agreed on by them, shall be immediately executed and recorded.

Section 2. Any agreement between club and player for service, evidenced by written acceptance, whether by letter or telegram, or receipt from player for money advanced to him to bind such agreement, shall be construed to be a contract and held to be binding, provided the player declines to enter into a formal contract; but his refusal to sign such formal contract shall render him ineligible to play with the contracting club for more than a period of ten days, or to enter the service of a club of any party to this Agreement unless released.

Section 3. When a player of a Major or a Minor League Club shall be suspended for a stated period, or indefinitely, in accordance with his contract and the constitution and by-laws of the league of which his club is a member, the Secretary of such Association shall give notice of such disqualification to the Secretary of the Commission, who shall at once promulgate the same, and such disqualified player shall not be eligible to play with or against the club of any party to this Agreement until such disqualification shall have been removed and notice of such revocation promulgated by the Secretary of the Commission.

Section 4. In all cases before it for adjudication, the Commission shall have the right to require affidavits from parties in interest and other witnesses, and may demand the production of documentary evidence. Failure to submit a statement, when required, or to furnish testimony under oath or affirmation or documentary evidence by a party in interest, within such time as may be specified by the Chairman of the Commission, shall result in the award of the case against the delinquent party, and the infliction of such penalty as the Commission may deem adequate.

Section 5. A player suspended by a club or league for a term longer than ten days shall have the right of appeal to the Commission, which is given authority to order his reinstatement if it deems the punishment excessive or not merited.

149 Article IX.

Section 1. The Secretary of the Commission, who shall act as Treasurer in addition to his other duties, shall furnish a sufficient bond for the faithful performance of his duties and the safekeeping of all moneys which come into his custody in the administration of his office. He shall keep the minutes of each meeting, and preserve a correct record of all contracts, releases, reservations, selections, suspensions and reinstatements of players, and shall provide himself with an official stamp for certifying the time of receipt by him of all official documents.

Section 2. On the receipt of a notice of selection, he shall note upon it in ink the amount of money accompanying it, the date and hour of its arrival, and adopt every precaution possible to prevent complications over the priority in time of the filing of selections of players, by different clubs, and the club which first registers its selection of a player with the Secretary, as provided herein, shall be entitled to the services of such player. Provided, that all drafts for players received by the Secretary of the Commission on or before 9 o'clock A. M. of the first drafting date shall be considered as having been received at the same time. Drafts received after that time shall be noted as provided in Article IX, Section 2, of the Agreement, excepting that the time of the receipt of a draft by telegram shall be evidenced by receiving time noted thereon at the telegraph office.

Section 3. The Chairman shall prepare and promulgate all decisions and rulings of the Commission, unless he assigns the duty to another member.

Section 4. The expenses of the Commission, in excess of its revenue from games conducted under its auspices and from all other sources, shall be paid by the Major Leagues, share and share alike.

Section 5. All questions before the Commission may be determined by a mail vote of its members.

150 Article X.

Section 1. Every league shall strictly enforce the provisions in its constitution against open betting on its grounds, and club officials are required to cause the arrest and prosecution of those who engage in the practice.

Section 2. No game or series of games shall be played for a stake between clubs of any party to this Agreement, nor shall any player of a club accept or agree to accept a sum of money or present of great value as an inducement or reward for special effort on his part in winning or trying to win a game.

Original Agreement adopted September 11, 1903. (Amended from time to time.)

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By THOS. J. LYNCH,
*President, and*
THE AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By B. B. JOHNSON,
*President.*
THE NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES,
By M. H. SEXTON,
*President.*

151 There was then produced a copy of Rules and Regulations attached to the declaration filed in this cause, which was offered and received in evidence, and reads as follows:

152 *Rules and Regulations Governing the National Commission.*

As Revised and in Force January 1, 1914.

Rule 1. In addition to the regular and special sessions provided for in Section 2, of Article IV, of the National Agreement, the Commission may meet for the transaction of business at any time and place unanimously agreed on. The Chairman shall mail or wire notice of regular and special meetings forty-eight hours in advance thereof to the address of each of his associates, stating the time and purpose of such meeting.

Rule 2. The order of business at meetings of the Commission shall be as follows:

1. Roll Call.
2. Reading of Minutes of preceding meeting and action thereon.
3. Election of Officers.
4. Reports of Officers.
5. Reports of Committees.
6. Unfinished business.
7. Miscellaneous and New Business.
8. Adjournment.

Rule 3. The Chairman and Secretary, each of whom in addition to submitting an annual report of his official acts at the January meeting of the Commission, shall keep a record and present a detailed statement of the current affairs of his office at all other meetings. They are respectively authorized to create liability for such incidental or other expense as may be necessary for the proper
153 discharge of their duties. The Chairman's report at the January meeting shall include such review and recommendations as he may deem advisable.

Rule 4. The Secretary shall have charge of all records, documents and other papers of the Commission not required in the consideration of a case; promulgate all rulings and other acts of the Commission, when directed to do so by its Chairman; promptly bulletin contracts, releases, suspensions of all Major League players, and drafts or purchases of Minor League players by Major League Clubs; keep a roster of the officers of each party to the Agreement, together with a list of all Leagues, the membership of each, the address of its League and Club presidents, and the past and present club connections of every National Agreement player.

Rule 5. Acting as Treasurer, the Secretary shall be custodian of all funds of the Commission and shall disburse money only on the warrant of the Chairman, and the receipt of the party entitled to it, except sums received by him for the draft or release of Minor League players, which shall be promptly forwarded to and receipted for by the Secretary of the National Association, and all other amounts entrusted to him for a specific purpose or paid by the direction of the Commission. His records shall show the name of each drafted or purchased Minor League player, the club from which he was secured and that obtaining title to him, the amount paid, as well as the time of the receipt and disbursement of the sum involved, and the date of the receipt thereof by the party entitled to it, or the Secretary of the National Association.

Rule 6. Whenever, in the judgment of its Chairman, additional funds are required to meet the obligations of the Commission, an equal assessment for the purpose shall be levied on each Major League.

Rule 7. Every finding and ruling of the Commission shall be reduced to writing, signed by the member or members on whom the duty devolves, and recite the reasons on which its conclusions
154 are predicated. The original shall be filed with the Secretary, a letter-press imprint retained by the Chairman and copies thereof furnished by him to the Secretary for transmission to every party involved, and also to the President of each Major League, the Secretary of the National Association, and leading news agencies for promulgation. All documentary evidence considered in the hearing of a case, except contracts or agreements, copies of which shall be retained and the original returned to the party entitled to them, shall be preserved by the Secretary with the signed finding. A certified copy of a finding or any other document in his custody shall be forwarded to an applicant for it by the Secretary on the payment of a reasonable fee.

Rule 8. Notice by letter or telegram of a draft unaccompanied by the amount specified in Section 6, Article VI, of the Agreement shall not be considered until such amount has been received, and the time of filing of such draft shall be noted by the Secretary to be the time of the actual receipt by him of the required amount.

Rule 9. When one or more clubs of each Major League file notice of selection of a player from the same Class "AA" or Class "A" club "at the same time," the names of such clubs shall be placed in a hat and the first drawn therefrom shall be entitled to draft a player from

such Class "AA" or Class "A" club. In the event of the waiver or cancellation of such draft, the other clubs in the order in which their names were drawn from the hat shall have the privilege of selection from such Class "A" or Class "AA" club. This procedure shall be followed when all of the selecting clubs are of the same Major League.

Rule 10. When a notice of the selection of the same eligible player of a club of lower classification than Class "A" is filed by a club of the same or of opposite Major Leagues, the names of the qualifying drafting clubs shall be put in a hat, and the player shall be awarded to the club whose name is on the first slip drawn therefrom.

155 Rule 11. When a player drafted by a Minor League club does not report it, he shall not be subject to draft until he has been in the service of such Minor League Club for at least one-half of a season.

Rule 12. The transfer of a player by or to a Major League club for immediate or future delivery shall not be valid unless under an agreement in form prescribed by the Commission, containing all the conditions of such transaction, signed by the President of each interested club, or its authorized agent, as certified to and recorded with the Secretary of the Commission, accompanied by the amount of the consideration, payable to the releasing club, or written acknowledgment of its receipt, and approved and promulgated by the Chairman of the Commission. No agreement or arrangement for the transfer of a player for a financial consideration or in a trade will be recognized or enforced by the Commission unless in writing, and submitted within a reasonable time after its negotiation to the Chairman of the Commission for record.

Rule 13. The release of a player by a Major League club to a Minor League club under an agreement conferring on the releasing club the right to recall such player, or to claim another player, shall be approved by the Chairman of the Commission if the regulations in Rule 12 are complied with, under the following conditions:

(*a*) The consideration shall not be less than $300, receipt of which shall be acknowledged, or the award to the releasing club of the right to claim the released player or one or more players in lieu of him from the club granting the option, on the 15th day of August of the year in which such option is to be exercised.

(*b*) A Major League club will be permitted to release for a subsequent season, under optional agreement, two, but no more of its players who have been recalled under optional agreements.

(*c*) Unless stipulated in the agreement that he shall continue with the club securing his service until the close of its playing
156 season, the player shall report to the club exercising its option by August 15th of the year of such agreement.

(*d*) If the club accepting a player under an optional agreement does not desire to retain him, it may release him to another club, subject to such option, but before such player may be released outright, the Major League club holding the option shall be given three days' notice of such intention, and on its failure to at once recall the player, with the consent of the Commission, its right to reclaim him under the option agreement shall be forfeited and the player shall

become a free agent. The Minor League club's responsibility for the salary of a player accepted by it under an optional agreement shall cease at the expiration of the three days' notice to the Major League club of its intention to release such player.

(*e*) A purchased Major League player who has participated in a game and been regularly waived on may be released before September 15th of the year of its execution under an optional agreement, exercisable on August 15th of the following year. Such player shall, however, be subject to draft in the year of his release under such option, regardless of the approved optional agreement by a Major League club or a Minor League club of higher classification than that in whose service he is after August 26th.

Rule 14. When a Major League club releases a player on whom it has previously exercised an option and repurchases his services, such player must report to the purchasing club on or before August 15th following such repurchase, or be subject to selection from the Minor League club with which he is playing after that date.

Rule 15. A club which exercises an option on a player's services shall be responsible to him for any arrearage in salary to him from the club from which he is recalled, which shall be repaid to the club settling the player's claim before protection shall be renewed to the city of the defaulting club.

Rule 16. A player recalled under an option shall not be entitled to salary beyond the season of the releasing club from
157 the club reclaiming him unless he reports to it and enters its service by its direction.

Rule 17. The following regulations will be observed by the Commission in determining the contractual obligations between clubs and players and the reservation privileges of clubs:

(*a*) A non-reserve clause in the contract of a Major League player without the approval of the Commission, or of a Minor League player without the approval of the National Board, shall not be valid.

(*b*) Claims of players for arrearage in salary against National Association clubs will not be considered by the Commission, except on appeal from the decision of the National Board. The amount of a Club's indebtedness to its players shall become a lien against the city it represents, and protection shall not be extended to it until such salary debts are settled.

(*c*) A contract "for the season" without specifying dates signed by a player after the adoption of a schedule of the league of which his club is a member is binding for the full term of such schedule, although the league may subsequently shorten it.

(*d*) A club which before or after the beginning of the term of its contract with him releases the services of a player to a club whose championship season commences after that of the releasing club must pay him at the rate of his canceled contract from the time it would have become effective, but for his release up to the day his salary starts with his new club, provided he promptly reports to and gives service to the club to which he is transferred. This section shall be construed with Rule 18 of the National Commission.

(*e*) The validity of an informal contract, arrangement or agreement between a club and player for the future service of the latter will not be recognized unless the written evidence thereof, as required by Section 2, Article VIII, of the National Agreement, is submitted to the president of the interested club's league, if a Major League, or to Secretary Farrell, if a Minor League, for promulgation in
158 the next official bulletin of that party to the Agreement and for certification to the Secretary of the Commission for record.

(*f*) A free agent who contracts with a National Agreement Club and is released by it, without a trial, or after entering its service without his consent to another club during the life of that contract shall be declared a free agent if the club to which he is released does not assume the salary his original contract called for to the close of its term.

(*g*) A Major League club which released a player to a Minor League club within fifteen days to the end of the latter's championship season will be required to pay him his full salary under his Major League contract for the rest of its term at the time of his release, less the amount of salary he could earn with the club to which he was released in case he reported forthwith to such club.

(*h*) In order that the attention of players may be called to this rule, the Secretary of the Commission is required to publish the same in two papers, devoted to baseball, twice each year.

Rule 18. After the required waivers are secured, a Major League club which releases a player who is actually in its service to any club under the National Agreement shall, at the time of notifying such player of his release, deliver to him a railroad and sleeping-car ticket, if the latter is required, to the city designated by the club securing him, which shall forthwith reimburse the releasing club for such transportation. The releasing club shall, thereupon, be liable only for that portion of the ten days' salary due the released player under its contract with him represented by the difference between the amount of his salary under such contract and the sum which he would have earned during this period had he promptly reported to the club to which he was released.

Rule 19. A National Agreement player, adjudged to have violated his contract, shall be declared and promulgated to be disqualified to play with or against any club under the National Agreement
159 until reinstated on his application by the Commission, if he be a Major League player, or by the National Board, if he is a Minor League player. If, after full investigation, the tribunal having jurisdiction finds that such violation of contract was premeditated and without palliating circumstances, the application of the offender for reinstatement will not be considered until the player has given satisfactory assurance that he will not repeat the offense, and will not be granted without the imposition of an adequate penalty.

Rule 20. A player who fails to report to or deserts the club having title to his services shall be declared and promulgated to be disqualified as a National Agreement player until restored to good standing on his application by the Commission, if a Major League player, or by the National Board, if a Minor League player. In all cases of

failure to report or desertion the offender may be reinstated with or without a fine, in the discretion of the tribunal having jurisdiction, provided, however, that if the player shall have joined an outlaw team his application for the removal of his disability shall not be acted on within three years after the commission of the offense.

Rule 21. May 1st and October 20th of each year the President of each Major League and the Secretary of the National Association shall report to the Chairman of the Commission the name of any player in his respective organization who has violated his contract, refused to report or deserted his team, together with the date and details of his offending, for promulgation. The Major League club neglecting to notify its President, or the Minor League club failing to report to the Secretary of the National Association such offenders prior to the date prescribed, shall be fined $50.00 for each omission. As soon after each of these dates as practicable, the Commission shall promulgate a list of ineligible players. A fine of $25 shall also be imposed on any club that disposes of a player offending under this rule or Rule 19 before his reinstatement.

Rule 22. Every provision of a finding of the Commission must be promptly and fully complied with by all interested parties.
160 No case will be reopened except on an application for a rehearing, stating in condensed form the grounds on which the reopening is requested, filed in writing with the Commission within ten days after the promulgation of such finding.

Rule 23. A fine of $25.00 shall be imposed on any National Agreement club that permits a player to play on its team for a longer period than that prescribed in Section 2, Article VIII, of the agreement, without a formal contract, and the right to reserve such player will not be recognized.

Rule 24. When an agreement entered into between two Major League clubs or a Major and a Minor League club relative to the purchase or arrangement for the draft of a player is not *bona fide*, the parties to such illegal agreement shall be punished for the first offense as follows:

| | |
|---|---|
| Major League clubs, fine of | $1,000.00 |
| Class AA clubs, fine of | 750.00 |
| Class A clubs, fine of | 500.00 |
| Class B clubs, fine of | 400.00 |
| Class C clubs, fine of | 300.00 |
| Class D clubs, fine of | 200.00 |

For the second offense protection shall be withdrawn from offending clubs for a period of six months, and their players shall not be subject to reservation until such clubs are restored to the privileges of the Agreement.

Rule 25. No National Agreement player may leave the service of his club to become a club owner, or manager of another National Agreement club, whether he does or does not participate in games with such club, unless he shall have secured his release from the club having title to his services. Should such player and his club be

unable to agree upon the conditions of his release, the Commission shall determine the amount if he is a Major League player, and the National Board, if he is a Minor League player.

Rule 26. To retain title to a player who fails to report to or leaves the service of the club having title to him, such club is not
161 required to tender a contract to the player on or before the first day of February of each year, as provided in the Agreement, but shall carry his name on its reservation list from year to year. The name of a player who has violated his contract shall not appear on the reservation list of a club.

Rule 27. The Secretary of the National Association shall furnish to the Secretary of the Commission the full name and address and the salary of every Minor League player who advances to a Major League club within five days after the transfer of such Minor League player.

Rule 28. Every National Agreement player who before, during or after the championship season shall participate in a game with or against a club harboring ineligible players, or controlled by ineligible players, shall be punished for the first offense and become ineligible until restored to good standing. Every National Agreement club which negotiates or contracts with a player who has violated this rule before his reinstatement shall be fined $200.00. Before the infliction of such fine the player or club shall be given a full hearing by the Commission, if the accused belongs to a Major League, or by the National Board, if the party charged belongs to a Minor League. A fine imposed for this offense shall be paid into the treasury of the Commission if inflicted on a Major League club or player, and into the treasury of the National Association when inflicted against a Minor League Player or club.

Rule 29. Interleague waivers on the services of a purchased or repurchased player, as required by Section 11 of Article VI of the National Agreement, shall not be requested prior to November 15, unless such player has been under contract to and in the actual service of the club applying for waivers. Waivers on the services of a drafted player may be asked at any time, but such player shall not be released within a year of his selection to a Minor League club until he has been under contract to and in the actual service of the releasing Major League club during the regular or training season.

162 Interleague waivers, which may be requested at any time, shall be secured on every Major League player other than a drafted or a purchased player before he shall be released to a club of lower classification, clubs of the league of the club soliciting waivers to have the preference in his allotment. Such player, if claimed, may be retained by the club applying for waivers on withdrawal of its waiver request within two days after receipt of notification of such claim. The waiver price of a player other than a drafted player shall be fixed by negotiations between the interested clubs or, in the event of their failure to agree, by the National Commission, whose decision shall be final.

On receipt of a request for interleague waivers from the president of the league of the club seeking the same, the president of the opposite Major League shall, within seventy-two hours, if the request be received during the championship season, or within five days at all other times, either waive claims to such player or negotiate for his services in behalf of the club claiming him in accordance with the terms prescribed by Section 11, Article VI, subject, however, to priority in right of any club of the league of the club asking for waivers to his services. The time limit within which interleague waivers can be exercised will begin to run from the time designated as the receiving time at the telegraph office of the city where the headquarters of the opposite Major League is located, with the proviso that telegrams received on Sunday or after 12 o'clock noon Saturday shall be considered as received on the following Monday at 9 o'clock, if such Monday is not a holiday; and that all telegrams which are received on holidays shall be considered as received at 9 o'clock on the day following such a holiday, when such following day is not a Sunday, and that where the time limit expires on Sunday it shall be extended until the following Monday.

Rule 30. In the event of the death or permanent incapacity of a purchased player while in the service of the releasing club, or prior to his reporting to the club acquiring title to him in the training or championship season, the agreement covering his release shall be null and void, and the party of the first part thereto shall forthwith return to the party of the second part all or any of the consideration received for his release, whether it be in money or the release of one or more players, and the purchasing club shall be relieved from all obligation for payments that have not matured.

Rule 31. After the list of reserved players has been promulgated by the Secretary of the Commission, in accordance with Section 1, Article VII, of the Agreement, all omissions and errors therein must be reported by clubs within fifteen days after such promulgation to the Secretary of the Commission, who shall on or before November 15 of each year thereupon promulgate a revised list containing the names of all purchased and drafted Major League players. A player whose name is not on such revised list shall be considered a free agent, and be permitted to negotiate with any club under the Agreement.

Rule 32. A National Association club which, in accordance with Section 9, Article VI, of the National Agreement, has claimed a player drafted by a Major League club shall have the privilege of canceling such claim at any time by giving notice thereof to the Commission through the office of the Secretary of the National Board. If a player on whom a claim is cancelled shall also have been claimed by one or more clubs of lower classification than the club relinquishing its claim, the Secretary of the National Association shall forthwith determine which of such clubs is entitled to claim him. The club to which he is allotted shall thereupon be entitled to his services upon the payment of the draft price to the selecting club before he may

be released during that season to any other Minor League club, provided, however, that if the claimed player be tendered to the claiming club before notice of cancellation of its claim is filed with the Secretary of the National Association, such club shall be required to pay the claiming price forthwith, unless the interested Major League club shall waive it and elect to retain the player. The Major League club that observes this rule shall be considered to have fully
164 complied with the provisions of this section and article of the National Agreement, and may release the services of the drafted player to any club it may see fit.

Rule 33. A Major League club whose players, exclusive of manager and disqualified players, under contract to it, with those whose services have been purchased or who have been recalled under optional agreements, total thirty-five on September 15th, will be debarred from the privilege of draft for that year. A Major League club whose total number of players is less than thirty-five on the opening day of the draft period will be allowed to exercise the right of selection; but, if through awards by draft, its list exceeds thirty-five players, the excess number must be disposed of prior to the filing of its reservation list on or before October 1st of that year.

Rule 34. An appeal from a finding of the National Board will not be considered by the Commission unless notice thereof is served within thirty (30) days after the promulgation of the decision to which the appellant excepts. When a ruling of the National Board directs a club or player to do or omit to do a particular act within a prescribed time, the right of appeal to the Commission will not be recognized until every requirement has been complied with. If the decision complained of be reversed by the Commission on appeal, the rights and interest of all parties affected will be fully protected.

Rule 35. The Commission may by a majority vote at any time adopt additional rules and modify or repeal those in force.

Rule 36. A Major League player shall not be released outright or under an optional agreement to a club in Class "A" or a lower classification until interleague waivers have been first obtained on him, as provided in Rule 29, and such player has been tendered to all Class "AA" clubs, at a price not to exceed $1,000 and, if such release be to a club below Class "A," to all Class "A" clubs at a price not to exceed $750.

Provided, however, that Rule 32 shall be observed in the release of a drafted player within the year of his selection. To pre-
165 vent delay from tendering such player to Class "AA" and Class "A" clubs, the president of the Major League soliciting interleague waivers shall at the same time notify the Secretary of the National Association to ascertain by wire from Class "AA" and Class "A" clubs having the privilege of claiming him which club or clubs desire him, and to telegraph his report to the president of the league of the club requesting waivers within seventy-two hours after the receipt of such notification.

If the player be claimed by more than one club in the same classification, the releasing club shall have the privilege of deciding which

of the claiming clubs shall secure his services, Class "AA" clubs to have the priority.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*

166 There was then produced copy of agreement of January 6, 1914, attached to the declaration filed in this cause, which was offered and received in evidence, and reads as follows:

167

*Agreement.*

Made Between National Agreement Leagues, Clubs and Players, on the 6th Day of January, 1914.

At a conference, held in the City of Cincinnati, on January 6, 1914, the National Commission, representing the National and American Leagues, a Committee of the National Association of Professional Baseball Leagues and a Committee of the Baseball Players' Fraternity, each and all of said representatives having full authority to act for and in behalf of their respective organizations and the individual members thereof, agreed to the following changes in and modifications of the existing rules and practices, governing the relations of members of the Baseball Players' Fraternity with National Agreement Clubs and Leagues:

First. When a Major League player receives a ten days' notice of unconditional release, or when a Class AA or Class A player receives a five days' notice of unconditional release, he shall be free to sign with any team immediately, the contract to run from the expiration of his notice of release. Provided, however, that no Major League, Class AA or Class A player shall be unconditionally released before waivers have been secured upon him from all the clubs of the classification of the releasing club; and provided further that when a player is transferred by one team to another, in the same classification, it shall be at the salary and under all of the conditions set forth in the player's contract at the time of his transfer.

Second. Class AA and Class A players shall receive five days' notice in writing before they shall be released unconditionally.

168 Third. The salary of a player transferred to a lower classification, in case there is a dispute over the same, shall be adjusted by the National Commission if he be a Major League player, and by the National Board of Arbitration, if he be a Minor League player, who shall have the right to appeal from the finding of the Board to the Commission.

Fourth. No club shall transfer the services of a player to any other club without furnishing to the player in writing all of the conditions under which the transfer is made, and showing what club, if any, has claim to the player's services and what that claim is.

Fifth. When a player receives his unconditional release, he shall be notified in writing to that effect. It is further understood that the

National Commission, the National Board and the Fraternity will take every further precaution to prevent the abuse of the waiver rule.

Sixth. Every player shall be furnished with a copy of his contract with his club, and his copy shall be considered an original.

Seventh. There shall be printed in red ink and large type on all contracts the following notice, the only change to be made therein being the substitution of the words "minor league" for "major league" and the insertion of the words "or its authorized agent," after the word "president," when such contract is a Minor League contract, and in this latter class of contracts instead of a fine of $500 a fine of $100 shall be assessed against the manager and a fine of from $100 to $300 assessed against the club, according to classification:

*"Important Notice to Players and Club Presidents.*

"Every player before signing a Major League contract should carefully scrutinize the same to ascertain whether all of the conditions agreed upon between the player and the club president have
169 been incorporated therein, and if any have been omitted the player should insist upon having all the terms, conditions, promises and agreements inserted in the contract before he signs the same. If at any time, as the result of an official investigation, it is ascertained that an agreement of any kind between a Major League club president and a player is not fully set forth in the player's regular contract or made a part thereof, then a penalty shall be inflicted against the club violating this provision in the sum of $500.00, the same to be paid into the treasury of the league of which the contracting club is a member, and the said contract shall be null and void and the player unconditionally released."

Eighth. Every club shall furnish each player with two complete uniforms, exclusive of shoes. The player shall make a deposit of $30.00 therefor, which shall be returned to him at the end of the season or the termination of his contract, upon the surrender of the uniforms by him to the club. The words "complete uniforms" shall be construed to mean two pairs of trousers, two shirts, two belts, two caps, stockings as required and a coat or sweater.

Ninth. Every Major League club shall pay the player's traveling expenses, including Pullman accommodations and meals en route, from his home city to the training place of the club, whether the player be ordered to go there direct or by way of the city in which the club is located, or to the point at which the players are instructed to assemble for its training trip. Every club in the National Association shall pay the actual traveling expenses of its players from their respective homes to the training camp, or so much thereof as does not exceed the traveling expenses from the city in which the club is located to its training camp.

Tenth. If a regular contract be not tendered to a probationary player, who makes a written request therefor, before the expiration of the forty-five days' probationary period, he shall be given his unconditional release.

Eleventh. A player, who has been in the Major Leagues for any

portion of the playing season of ten different years, shall receive his unconditional release, subject, however, to reservation by the club which signs him, if at any time after the beginning of the tenth year the club to which he is then under contract does not desire to retain him and waivers on him are secured from all other Major League clubs.

Twelfth. A player who has been in the Major and the Class AA leagues for any portion of the playing season of fifteen different years, shall receive his unconditional release, subject, however, to reservation by the club which signs him, if at any time after the beginning of the fifteenth year no team in such leagues desires his services and waivers on him have been secured from all other Class AA clubs.

Thirteenth. A player who is in the service of a Major League Club for part of a season only shall receive such proportion of the season's salary, or of the monthly salary multiplied by six, stated in his contract, as the number of days of actual employment bears to the number of days in the season, or the number of days in the season plus the additional number of days for which the player is held, provided he be not held more than six months from the beginning of the season.

Fourteenth. A player who is fined or suspended by a club shall be given notice thereof in writing, stating the amount of the fine or the duration of the suspension and the reason therefor.

Fifteenth. No league or club shall discriminate against any player because of his connection with the Baseball Players' Fraternity.

Sixteenth. Every Major, Class AA and Class A league park shall be equipped with a blank wall painted dark green, placed back of a center field in line with the pitcher's plate and home plate, of sufficient size to form a background for pitched balls.

Seventeenth. Before a Major League player shall be released outright or under an optional agreement to a club of a lower classification, waivers must be secured upon him from all other Major League clubs; and when a Major League Club refuses to waive and the price cannot be agreed upon between the two clubs, it shall be fixed by the National Commission.

171 Eighteenth. Before a Major League player shall be released outright or under an optional agreement to Class A or a lower classification, his services shall first be tendered to all Class AA clubs at a price not to exceed $1,000 and then to all Class A clubs at a price not to exceed $750. If he be a drafted player, the club from which he is drafted shall have prior claim to all other clubs in its classification.

Nineteenth. Before a Class AA player shall be released outright or under an optional agreement to a classification lower than Class AA, waivers shall first be secured from all other Class AA clubs at a price not to exceed $1,000, and then the player tendered to all Class A clubs at a price not to exceed $750.

Twentieth. Before a Class A player shall be released outright under an optional agreement to a lower classification, waivers shall be secured from all other Class A clubs at a price not to exceed $750.

Twenty-first. This agreement shall be in full force for the season of 1914 and thereafter, with the exception of Paragraphs Third and Twelfth, which shall be subject to revision or modification at the request of either party after the expiration of one year from the time of entering into this agreement, and shall be as effective and enforceable as though fully set forth in each player's contract, whether said contract was entered into before or after said conference or the date of the adoption of this agreement. The provisions of this agreement shall take precedence over any conflicting baseball legislation or clause of a player's contract.

THE NATIONAL COMMISSION,
*(Duly Authorized Agent of the National and American Leagues).*
By AUGUST HERRMANN,
*Chairman.*
THE NATIONAL ASSOCIATION,
By M. H. SEXTON,
*President.*
THE BASEBALL PLAYERS' FRATERNITY,
By DAVID L. FULTZ,
*President.*

172 The witness further testified that the National Association is the organization that groups together the minor leagues all over the country, which have a National Agreement with the National Association, and is a party to the National Agreement.

Does not know how many minor leagues were in this way brought under National Agreement in September, 1903, but any number of such leagues have started and broken down from time to time. The number has varied and has been as high as sixty or seventy; in 1914 there were about thirty-six. There are six or eight clubs in each minor league, and thirty-five or thirty-six minor leagues would include approximately 225 clubs and in the neighborhood of 6,000 players. The combination effected by the National Agreement took in every professional baseball player in the country—every ball player who played baseball regularly for a living. Took in every club that was operated solely for profit—clubs operated as a business. Amateurs, such as college clubs, frequently charge admission which defray expenses, but do not play for the revenue. This combination then represented all of the professional ball players and professional ball clubs in the United States.

Organized Baseball has been known as such for fifteen years at least. It is known as "O. B." It continued without competition in the United States until 1913, and was able to do so because they controlled every baseball player in the United States and the baseball players constituted the raw material of the game. Without attempting to take players that were in their ranks there could not be any competition with them. This control made it a tremendous job to attempt to start competition in the game.

173 National Commission was created by the National Agreement, and has since had general charge of baseball. It is the

executive department of the business, and has made the laws which control baseball. It has acted as a court, heard cases on appeal of ball players and clubs, conducted the World Series, promulgated rules and regulations, under which they act, which were issued over signatures of members, has tried cases under the rules between ball players and the clubs, and issued their opinions in printed form, showing under what rule or regulation the case is determined. The Commission is now composed of August Herrmann, chairman, Ban B. Johnson, president of American League, and John A. Heydler, president of National League. Witness is familiar with the reservation clause of players' contracts. Uniform contract was made for National League players and another uniform contract for minor league players, and the reservation clause was put in all contracts with players as a matter of general practice, and witness knows that Mr. Herrmann said so. The reserve clause in the contract of player E. C. Foster with the Washington Club, dated October 3, 1912, for the season of 1913, provides as follows:

"Clause 10. In consideration of the compensation paid to the party of the second part by the party of the first part, as recited in Clause 1 hereof, the party of the second part agrees and obligates himself to contract with and continue in the service of said party of the first part for the succeeding season, at a salary to be determined by the parties to said contract."

This contract was in effect at the time plaintiff was endeavoring to get its players, and Foster was under contract for 1913 and the reservation applied to 1914, and it was for 1914 the Federals were endeavoring to secure players.

174 Thereupon said contract was offered and received in evidence, and reads as follows, to-wit:

*Regular Contract.*

Articles of agreement, between the Washington American League Base Ball Club, of the City of Washington, in the District of Columbia a club member of a League known as the "American League of Professional Base Ball Clubs," party of the first part, and E. C. Foster, of the City of Chicago, in the State of Illinois, party of the second part.

Witnesseth:

1. That in consideration of the faithful performance by the party of the second part of the conditions, covenants undertakings and promises hereinafter set forth, including the option in first party to terminate this contract in accordance with Clause 8 hereof, the said party of the first part agrees to pay unto the party of the second part the following compensation:

Regular Contract—(When a regular contract, supplemental to a probationary contract, has been entered into between a major league club and a purchased or drafted minor league player, the same must be immediately recorded for promulgation).

For the season of 1913, beginning on or about the 11th day of April, 1913, and ending on or about the 11th day of October, 1913,

at the rate of — (3,500.00) dollars for such season. All payments to be made as follows:

In semi-monthly installments on the first and fifteenth of each month during the period covered by this contract; unless this contract shall be terminated by the first party while the second party be "abroad" with the ball club of the first party for the purpose of playing games, in which event the installment then falling due shall be paid on the first week day after the return "home" of the ball club.

175 The compensation of the party of the second part stipulated in this contract shall be apportioned as follows: 75% thereof for services rendered and 25% thereof for and in consideration of the player's covenant to sanction and abide by his reservation by the party of the first part for the season 1913, unless released before its termination in accordance with the provisions of this contract. The party of the second part shall be entitled to and shall be paid the full consideration named herein in regular semi-monthly installments, unless released prior to the termination of this contract in accordance with Section 8 hereof, regardless of whether or not the contracting club exercised the privilege of reserving the party of the second part for the season of 1913.

2. Said party of the second part agrees to perform for party of first part, and for no other party during the period of this contract (unless with the consent of said first party) such duties pertaining to the exhibition of the game of base ball as may be required of him by said party of the first part, at such reasonable times and places as said party of the first part may designate, for the American League season from the year 1913, beginning on or about the 11th day of April, 1913, and ending on or about the 11th day of October, 1913, unless sooner terminated in accordance with the further provisions thereof.

3. Party of the first part may, from time to time, during the continuance of this contract, establish reasonable rules for the government of its players "at home" and "abroad" and such rules shall be a part of this contract as fully as if herein written, and binding upon second party hereto; and for violation of these rules and for any conduct impairing the faithful and thorough discharge of the duties incumbent upon second party, may impose reasonable fines
176 upon second party and deduct the amount thereof from any money due, or to become due, to second party herein. Party of the first part may also suspend the party of the second part for violation of any rules so established and during such suspension the party of the second part shall not be entitled to any compensation under this contract.

4. It is further agreed that should second party be disabled or his ability to perform his duties be impaired at any time during the term herein prescribed, the said party of the first part may deduct from the amount then due or to become due under this contract, such proportion thereof as the period of disability or impairment may bear to the term herein prescribed; but no such deduction shall be made by reason of any accident or injury received by second party while in

performance of his regular duties under the direction of first party, unless such injury or accident shall wholly or partly incapacitate second party for a period of fifteen days, in which event this contract may be terminated at the option of first party.

5. It is further agreed, should party of the second part become disabled, as provided in the preceding section that he will submit himself to medical examination and treatment by a regular physician, in good standing, to be selected by the first party, and such examination, when made at the request of the first party, shall be at the expense of said first party, unless made necessary by some act or conduct of second party contrary to the terms of this agreement or rules and regulations made under it.

6. It is further understood and agreed, that the said party of the first part shall furnish the said party of the second part with two complete uniforms, exclusive of shoes, for which the said party of the first part shall be allowed the sum of $30 toward the cost
177 thereof, to be deducted from the wages or salary herein prescribed. And the said party of the first part shall provide and furnish the said party of the second part, while "abroad" or travelling with the "nine" or team in other cities, with proper board, lodging, and pay all proper and necessary travelling expenses.

7. In order to enable the party of the second part to fit himself for the duties necessary under the terms of this contract, the said party of the first part may require the said party of the second part to report for practice at such place as the party of the first part may designate and participate in such exhibition contests as may be arranged by said party of the first part for a period of 30 days prior to the 11th day of April, the party of the first part to pay the actual hotel and travelling expenses of the said party of the second part, from the City of Washington during said period. In event of the failure of the party of the second part to report for practice a penalty of at least one hundred dollars may be imposed by party of first part, same to be deducted from the compensation stipulated in this contract.

8. It is further understood and agreed that the party of the first part may, at any time after the beginning and prior to the completion of the period of this contract, give the party of the second part ten days' written notice to end and determine all its liabilities and obligations under this contract, in which event all liabilities and obligations undertaken by said party of the first part, in this contract, shall at once cease and determine at the expiration of said ten days; the said party of the second part shall thereupon be also freed and discharged from obligation to render service to said party of the first part. If such notice be given to the party of the second part while "abroad" with the club, he shall be entitled to his necessary travelling expenses to the City ——.

178 9. The party of the second part will not be permitted at any time, either during the playing season, or before the commencement or after the close thereof, to participate in any exhibition base ball games, indoor base ball, basket ball, or football, unless the consent of the party of the first part has first been secured in writing.

10. In consideration of the compensation paid to the party of the second part by the party of the first part as recited in Clause 1 hereof, the party of the second part agrees and obligates himself to contract with and continue in the service of said party of the first part for the succeeding season at a salary to be determined by the parties of such contract.

11. It is further understood and agreed between both parties to this contract that they will respect and abide by the Constitution, rules and edicts of said League, subject only to an appeal for final adjudication to the National Commission, and also respect and abide by all of the provisions and conditions of the National Agreement and rules of the National Commission.

In testimony whereof, The said party of the first part hath hereunto caused its common seal to be affixed and these presents to be subscribed by the president of said club, and the said party of the second part has hereunto set his hand and seal this 3rd day of October, A. D. 1912.

BENJ. MINOR,
*President Washington Base Ball Club.*
E. C. FOSTER, [SEAL.]
*Player.*

The witness then identified contract with player E. C. Foster, dated January 14, 1914, which was offered and received in evidence, and reads as follows:

☞*Important Notice to Players and Club Presidents.*

Every player before signing a major league contract should
179 carefully scrutinize the same to ascertain whether all of the conditions agreed upon between the player and Club President have been incorporated therein, and if any have been omitted the player should insist upon having all the terms, conditions, promises and agreements inserted in the contract before he signs the same. If at any time as a result of an official investigation it is ascertained that an agreement of any kind between a major league club president and a player is not fully set forth in the player's regular contract, or made a part thereof, then a penalty shall be inflicted against the club violating this provision in the sum of $500.00, the same to be paid into the treasury of the League of which the contracting club is a member, and the said contract shall be null and void, and the player unconditionally released. (The above is printed in red.)

*American League Player's Contract.*

Regular.

Articles of agreement, between the Washington American League Base Ball Club, of the City of Washington, in the District of Colum-

bia, a club member of a league known as the "American League of Professional Base Ball Clubs," party of the first part, hereinafter called the Club, and E. C. Foster, of the City of Washington, in the District of Columbia, party of the second part, hereinafter called the Player.

Witnesseth:

That in consideration of the mutual obligations herein and hereby assumed, the parties to this contract severally agree as follows:

1. The club agrees to pay the player for the season of 1914-15, beginning on or about the 14th day of April, 1914-5, and ending on or about the 14th day of October, 1914-5, a salary at the rate of
180 Three Thousand ($3,000) — for such season; and an additional sum at the rate of One Thousand ($1,000) Dollars for such season, said additional sum being in consideration of the option herein reserved to the club in Clause 10 hereof; said additional sum to be paid whether said option is exercised or not, making the total compensation to the player for the season herein contracted for Four Thousand ($4,000) Dollars, per season.

All payments to be made as follows:

In semi-monthly installments after the commencement of the period covered by this contract, unless this contract shall be terminated by the club while the player is "abroad" with the club for the purpose of playing games, in which event the installment then falling due shall be paid on the first week-day after the return "home" of the club. Provided, however, that if the player is not in the service of the club for the entire season, then he shall receive such proportion of the season's salary, or of the monthly salary multiplied by six, stated in this contract, as the number of days of actual employment bears to the number of days in the season or the number of days in the season plus the additional number of days for which the player is held, provided he be not held more than six months from the beginning of the season.

2. The club may from time to time during the continuance of this contract establish reasonable rules for the government of its players "at home" and "abroad" and such rules shall be a part of this contract as fully as if herein written and binding upon the player; and for violation of such rules or for any conduct impairing the faithful and thorough discharge of the duties incumbent upon the player, the club may impose reasonable fines upon the player and deduct the amount thereof from any money due or to become due to the player. The club may also suspend the player for violation of any rules so established, and during such suspension the player shall not
181 be entitled to any compensation under this contract. When the player is fined or suspended, he shall be given notice in writing, stating the amount of the fine or the duration of the suspension and the reason therefor.

3. Should the player be disabled, or his ability to perform his duties be impaired at any time during the term herein prescribed, the club may deduct from the amount then due, or to become due under this contract, such proportion thereof as the period of said disability or impairment may bear to the term herein prescribed;

but no such deduction shall be made by reason of any accident or injury received by the player while in performance of his regular duties under the direction of the club, unless such injury or accident shall wholly or partly incapacitate the player for a period of fifteen days, in which event this contract may be terminated at the option of the club, provided, however, that the player shall be given written notice thereof by the club.

4. Should the player become disabled, as provided in the preceding section, he will submit himself to a medical examination and treatment by a regular physician, in good standing, to be selected by the club, such examination when made at the request of the club shall be at its expense, unless made necessary by some act or conduct of the player contrary to the terms of this agreement or rules and regulations made under it.

5. The club shall furnish the player with two complete uniforms, exclusive of shoes, the player making a deposit of $30.00 therefor, which deposit shall be returned to him at the end of the season or upon the termination of this contract, upon the surrender of the uniforms by him to the club. And the club shall provide and furnish the player while "abroad" or travelling with the club in
182 other cities with proper board, lodging, and pay all proper and necessary traveling expenses, including Pullman accommodations and meals en route.

6. In order to enable the player to fit himself for the duties necessary under the terms of this contract, the club may require the player to report for practice at such places as the club may designate, and to participate in such exhibition contests as may be arranged by the club for a period of Thirty-five days prior to the 14th day of April, the club to pay the travelling expenses, including Pullman accommodations, and meals en route of the player from his home to the training place of the club, whether he be ordered to go there direct or by way of the city of Washington. In the event of the failure of the player to so report for practice and participate in the exhibition games, as provided for, a penalty of at least $100.00 may be imposed by the club, the same to be deducted from the compensation stipulated herein.

7. The club may, at any time, after the beginning and prior to the completion of the period of this contract, give the player ten days' written notice to end and determine all its liabilities and obligations hereunder, in which event the liabilities and obligations undertaken by the club shall cease and determine at the expiration of said ten days. The player, at the expiration of said ten days, shall be freed and discharged from all obligations to render service to the club. If such notice be given to the player while "abroad" with the club, he shall be entitled to his travelling expenses, including Pullman accommodations and meals en route, to the city of Washington.

8. The player agrees to perform for the club, and for no other party, during the period of this contract (unless with the writ-
183 ten consent of the club), such duties pertaining to the exhibition of the game of baseball as may be required of him by

said club, at such reasonable times and places as said club may designate for the American League season for the year 1914-'5, beginning on or about the 14th day of April, 1914-'5, and ending on or about the 14th day of October, 1914-'5, unless sooner terminated in accordance with other provisions hereof.

9. The player will not, either during the playing season, or before the commencement or after the close thereof, participate in any exhibition baseball games, indoor baseball, basket ball or foot ball, unless the written consent of the club has first been given to him.

10. The player will, at the option of the club, enter into a contract for the succeeding season upon all the terms and conditions of this contract, save as to Clauses One and Ten, and the salary to be paid the player in the event of such renewal shall be the same as the total compensation provided for the player in Clause One hereof, unless it be increased or decreased by mutual agreement.

11. The club shall not transfer the services of the player to any other club without furnishing the player in writing all of the conditions under which said transfer is made and showing what team has claim to his services and what that claim is.

12. The club will not discriminate against the player because of his connection with the Baseball Players' Fraternity.

13. The "NOTICE" printed in red ink at the head of this contract is hereby made a part hereof.

In testimony whereof, The parties hereunto have executed this contract in duplicate, each of which shall be considered an
184 original, one copy being retained by the club and one copy by the player, this 14th day of January, A. D. 1914.

WASHINGTON AMERICAN LEAGUE
B. B. CLUB,
[SEAL.] By B. S. MINOR, *President.*
ED. C. FOSTER, *Player.*

The witness further testified that the contract with Foster was subsequent to the conference with the Players' Fraternity; that the reserve clause was used uniformly at the time Federal League organized and for some years prior thereto.

The witness was then asked to point out provisions of National Agreement and of Rules and Regulations that bear upon subject of reservation of players, and he indicated the following: National Agreement, Article VI, sections 1, 2, 3; Article VII, sections 1, 2; Article VIII, sections 1, 3; Rules, 19, 20, 21, 25, 26, 28.

Witness said he knew the practical operation of these rules as construed and enforced by the National Commission, and upon being asked if he could take any particular case to illustrate the interpretation and enforcement of the reserve clause by the Commission, he mentioned Fritz Maisel as typical, who played ball on the Baltimore Club in the International League (Class AA), signed with it for one year, and had to stay with the Baltimore Club for that year and had no contract with the club for the following if the club wanted him; that Maisel, was sent by the Baltimore Club to a class B league of

lower rank and he went there and played for a year and later was drafted back by the Baltimore Club, where he played for a year or two, when he was sold by the Baltimore Club to the New York American League Club, and by that club he was subsequently sold to the St. Louis American League Club; that when he was under contract with these clubs for one year the question of his com-
185 pensation for the following year was always a matter of debate not between him and any club he might seek employment with but solely from the club by which he was employed in the previous year; that he was under contract with the New York Club in 1914; that in practice under the reserve clause if his name was on the New York Club's reservation list at the end of that year, No other club in Organized Baseball would attempt to negotiate with him for 1915. With reference to the reservation in Foster's contract for the season of 1913, the witness, being asked as to practical operations in the matter of negotiations between the club and Foster, testified that Foster had to secure employment for 1914 and 1915 with the Washington Club, had no alternative to seek employment from other clubs, and could not negotiate with any other club. Witness thinks this has been the uniform and universal way of interpreting the reserve clause; and knows of no exception in organized baseball; asked whether in practice Foster could have opened negotiations with any other club in any other league anywhere else in organized Baseball, witness replied: absolutely not; with the sole proviso that the Washington Club paid him what it owed him under that contract, put his name on the reservation list, tendered him a contract at such sum as it saw fit to tender him a contract for before February 1st of the following year.

Witness was asked if he knew of any cases where players had to quit baseball because of failure to agree upon salaries under the reservation clause, and he mentioned that of James Walsh, in 1914 a player on the plaintiff club, who during the last two or three years was tendered a contract by Memphis (a club in organized baseball) providing for a compensation which he would not accept, and he is now in some other work.

186 When asked as to cases illustrating the exercise of power by the National Commission, witness referred to that of Kauff, National Commission decision of No. 1253, dated May 1, 1915, page 32, 12th annual report of National Commission of 1916; that the ruling in this matter stated:

"The player applied to the National Commission for reinstatement in Organized Baseball. His request is refused for the reason that in the past he has not respected his contractual obligations and, therefore, in our judgment, is not a desirable person to be identified with the great national game."

That the decision of the National Commission, No. 1291, Thirteenth Annual Report of the National Commission of 1917, page 31, concerns the claim of the Indianapolis Club against the New York National League Club, relative to player Kauff, and is as follows:

"The Indianapolis Club requests the Commission to require the New York National League club to pay it $10,000 for the services of

player Benny Kauff under an agreement entered into between these clubs on August 28, 1914, and executed by the New York Club on September 11, 1914. This player who was drafted by the Indianapolis club in 1913 did not report to it, but signed and played with the Indianapolis Federal League club in that year, and was transferred to the Brooklyn Federal League club in 1915. This agreement, as originally drawn provided for the transfer of the player by the Indianapolis club for a consideration of $10,000 payable on May 1st, 1915, "provided said Benny Kauff signs a contract and reports to said New York baseball club and is retained by the said New York baseball club until May 1st, 1915." It was also stipulated that if the New York club did not retain the player up to the specified time he should be released to the Indianapolis club.

187 "Before the New York club signed the agreement now under consideration, this clause was added thereto and made a part thereof:

"'Within contract is signed with the understanding that the Indianapolis Athletic Association, operating the Indianapolis Baseball Club, shall have a legal contract with said Benny Kauff.

"The Indianapolis club promptly admitted that it did not have a contract with this player, its claim to his services being solely through draft and reservation.

"As one of the essential conditions under which the New York Club bound itself to accept the player at the stipulated price; to wit: that he was under contract to the Indianapolis club, was not complied with, the Commission holds the agreement was not executed and therefore is not enforceable.

"In April 1915, the New York club signed the player on his assurance that he was not under contract to the Brooklyn Federal League club, with which he was then playing. When the player appeared in a New York uniform, preparatory to taking part in a championship game of the National League, he was not permitted to do so by the umpires in charge, who acted on the instructions of the president of the National League that the player was ineligible, and the Commission later sustained this ruling. The New York club relinquished its claim to the player when convinced that the player was under contract to the Brooklyn Federal League club for 1915, 1916 and 1917.

"Prior to the adoption of the peace agreement, the National Association had by resolution declared that players who deserted its teams and played with Federal League clubs, would not be permitted to return to their former clubs. With this in mind, the major

188 leagues at the peace conference agreed that the Federal League clubs should retain control and dispose of players at that time under contract or optional reservation to them. The name of player Kauff appears on the list of the players retained by the Brooklyn Federal League club, which subsequently transferred him to the New York National League club, under the provision of the peace compact, with which he is now playing."

"The player's application for reinstatement in organized baseball was disallowed by the Commission in a decision promulgated on May 1, 1915. Until the adoption of the peace agreement containing the

stipulation that all Federal League players should be returned to good standing in organized ball, none of them who had disregarded contracts with or reservation by national agreement clubs were eligible to play with major or minor league clubs.

"The New York club secured the services of player Kauff from the Brooklyn Federal League club, which was fully empowered under the peace agreement to dispose of his services.

"As the agreement on which the Indianapolis club relies did not become binding or effective, because all of the conditions were not complied with, the Commission disallowed its claim.

"In common with all national agreement clubs, the Indianapolis club will benefit by the restoration of the game to normal conditions through the adoption of the peace agreement."

That is signed by Aug. Hermann, B. B. Johnson and John K. Tener, national commission, dated April 15, 1916.

189 Witness further testified that he remembered the decision of the National Commission, No. 1274, in re status of Player Plank, 13th Annual Report for 1917, page 11, which was read in evidence as follows:

190 "Player Edward S. Plank requests that he be declared a free agent upon three grounds: First, because he is entitled to his unconditional release under paragraph 11 of the Players' Fraternity Agreement; Second, because the peace agreement with the Federal League provides that no penalty shall be imposed on players who were in the service of that organization; Third, because the Federal League no longer has a claim to his services."

"Paragraph 11, of the Players' Fraternity Agreement, on which the player's first contention is predicated, reads as follows:

"'A player who has been in the major leagues for any portion of the playing season of ten different years shall receive his unconditional release, subject, however, to reservation by the club which signs him, if at any time after the beginning of the tenth year the club to which he is then under contract does not desire to retain him and waivers on him are secured from all other major league clubs.'

"This player joined the Philadelphia Club of the American League in 1901 and remained with it until 1914. Hence this paragraph would have been applicable to him in 1914, if all the other conditions recited therein had existed. The Philadelphia club requested waivers on his services in the fall of 1914. As the Cincinnati and Boston clubs declined to waive on him and the New York club of the American League began negotiations for his services when waivers were asked, and the Philadelphia American League club did not release him, the Commission unanimously rules that the player's claim to be declared a free agent for the sole reason that waivers had been sought on him under the above paragraph, is unfounded, and therefore dismisses it.

191 "As a matter of fact, instead of being influenced by the waiver requests, the player contracted with the Federal League Club for 1915, before the waivers were asked by the Philadelphia club.

"Although assured of a major League berth in the event of his release by the Philadelphia Club because of the refusal of two National League clubs to waive on his services and pending negotiations with the New York American League club for his purchase, the player in the fall of 1914, disregarding the interest of the club he was with from 1901 to 1914, inclusive, contracted and played with the Federal League club in 1915.

"If this player had observed the obligation imposed on him by the terms of his 1914 contract with the Philadelphia American League club, by continuing in its service for the following season, paragraph 11 of the Players' Fraternity agreement and provisions in the National agreement for his protection would have been enforced by the Commission, when applicable to conditions affecting him.

"The player's second contention is correct to the extent that all former Federal League players have been restored to good standing, but special privileges have not been conferred on them.

"His transfer to the St. Louis American League club is of record and his salary for 1916 is a matter for negotiation between him and that club.

"The player's request to be declared a free agent is denied.

"AUGUST HERRMANN,
"B. B. JOHNSON,
"JOHN K. TENER,
*National Commission.*

"February 7, 1916."

192 The witness further testified that a player can go from one league to another or from one club to another club in the same league by sale, draft, release or waiver. When a player is released, he becomes a free agent; players may be drafted by leagues of higher classification from those of lower rank by paying to the club employing them the required price; the National Agreement provides regular schedules of draft and waiver prices, which are paid to the clubs and not the players. In practice as a player goes higher he gets a better salary.

On the subject of schedules of games witness read Article III, section 2, of the National Agreement, providing that schedules shall not conflict in cities where there are rival clubs.

Witness also read Article V, section 2, respecting territory of each club, and section 3 in regard to exhibition games.

He further testified that a provision that clubs shall pay traveling expenses, including Pullman car fare, hotel bills, etc., as the players travel from place to place is put in all contracts of major leagues; that while traveling players are subject to discipline; that major league clubs take 25 people on trips, the player limit of National League clubs being 25 during the season—it has been reduced as low as 21, witness believes; that umpires do not travel with clubs, but do travel from city to city; that every major league ball player travels at least 6,000 miles during the season, and 25 men would travel 150,000 man-miles to each club, which makes 1,200,000 man-miles to each league; that teams carry with them uniforms, bats, masks,

chest protector of the catcher, gloves, shoes, etc. Baseballs are of course delivered to the club. The National League purchases baseballs from Spalding & Co., and the American League
193 from A. J. Reach Company. Witness thinks balls are shipped from factory to different clubs. That at the parks of major league clubs score boards are maintained upon which are recorded the scores by innings reported by telegraph from the other games in the league; that from many ball parks every play during the game is telegraphed to the city of the visiting club and frequently to other cities; that during the World Series this information is telegraphed probably to every place in the United States; that this is done to keep up and to satisfy the public interest; that full accounts of all games are sent to most newspapers.

Witness was one of counsel for Baltimore Federal League Club and assisted in negotiating for quite a number of players and drew a number of contracts; and he was connected with the committee having this in charge, which had a great deal of difficulty in getting players at reasonable salaries; they had to take old players; give them long-term contracts, in most instances eliminate the ten-day clause, and pay them substantial sums on account of salary; had to pay them larger salaries than they had been earning or were paid to players in the same class in other leagues; that younger players would not take the chance with the Federal League, knowing that to sign with it rendered them ineligible for future employment by Organized Baseball; that they had to go to the ranks of Organized Baseball to get players, as there were none elsewhere that they knew of; that there may have been capable men on college teams, "But seeking professional baseball players we had to go into the ranks of Organized Baseball;" that witness was present at first game of Federal
194 League in Baltimore; that he supervised the making of every contract for grading the field, and for construction of the stands; that the ball park was located within three or four squares of where baseball has been played in Baltimore for 27 years, and was very favorably located; that quite a bit of excavating was required; that the stands are generally wood, with steel uprights; that the grand stand accommodates 5,300, the two pavilions about 3,500, and the bleachers 2,000 to 2,500; that a number of people were turned away from the opening game, there being within a few hundred of 19,000 paid admissions; that a full team was obtained and played through the seasons of 1914 and 1915; that the Federal League employed between 180 and 220 players who almost to a man were gotten from Organized Baseball; at first, the only precaution taken about employing a player who was under definite contract for 1914 was to ask the player if he was under contract, and subsequently the Federal League president required that every contract have an affidavit by the player that he was not under employment on a definite contract for the period for which we were contracting with him. "We didn't bother about the reservation clause. We employed the players anyhow, because all organized baseball players have a reserve clause in their contracts." We concluded we were not compelled to recognize the reservation clause as a matter of law.

The plaintiff did not play games in 1916 because the Federal League was disrupted during the winter of 1915; that they did not have anybody to play ball with; that some of Federal League clubs entered into a contract with Organized Baseball and after that did not play with us any more, but "the Baltimore Club had nothing to do with that contract."

There were eight clubs in the Federal League during 1915.
195 Toward the end of that season Kansas City was short of funds and loans were made to it by other members of Federal League. Before or about the time of the end of 1915 season the Kansas City franchise was forfeited. Same condition existed in Buffalo. But of the remaining six clubs, five entered into this arrangement with Organized Baseball, and Baltimore did not; this was some time during December, 1915. The Baltimore club was just as ready to proceed with its business in 1916 as in other years. Witness has no personal knowledge of the peace agreement; he is still on the Board of Directors; and the Baltimore Club never sought to negotiate with Organized Baseball looking to being taken over or amalgamated with it or to obtain a franchise from it.

Witness has personal knowledge of all negotiations for everything that went into the park.

The witness was asked what was the total cost to the plaintiff club of the construction of the park, and stands and preparation of the grounds, to which question counsel for defendants objected, on the ground that the original cost of the structure cannot possibly be an item in a damage claim under the 7th section of the Sherman Act, nor the measure of the value of the premises at the time of the alleged injury, that the question is, what injury, if any, was done by the defendants to the business of the plaintiff, that the question of damages in the case of a business venture must depend upon the productive use of the plant at the time the damage was done, that it tends to mislead the jury if items of investment are given independ-
ently of the question whether or not the use made of the in-
196 vestment was a productive one, which objection was overruled and an exception then and there noted for the defendants.

Thereupon the witness stated that the buildings cost $56,102.85, alterations of the ground, grading and drainage, sodding, $13,465.85; chairs, furniture, turnstiles, and other chattel equipment, $13,080.81, the total of which is $82,649.46; that for this work bids were obtained on proper specifications, from all the builders in Baltimore of any skill or competence, and the contract awarded in each instance practically to the lowest bidder; that Otto G. Simonson, a stockholder, and after the second year a director in the club, was the architect; that the park differed from the major league ball parks in Organized Baseball only in that it was constructed of wood above concrete rather than concrete altogether; the result of this was to make it a cooler place to sit in during summer; that it was subject to greater fire risk, but was very well adapted to the purpose; that it was built from about February 1st to April 13, 1914, and a runway was added in 1915; that after the Federal League went out of existence

the Baltimore Club could not carry on its business as it was originally designed and for which it had been incorporated, and since then it has sold the ball park to the only available customer, the Baltimore Club of the International League, which is a minor league in Organized Baseball, the selling price being $25,000.

On cross examination the witness testified that previous to the incorporation of the Baltimore Club in 1913, he had knowledge of the existence of Organized Baseball, which has been substantially in its present form since about 1903; that there was in existence since 1903

197 the National League, the American League and the National Commission existing under terms of the National Agreement, and also an association of minor leagues grouped under the title of the National Association which was a party to the National Agreement but is not a party to this suit; that a league in some form is necessary to the successful playing of professional baseball; that schedules and competitions are features that require the existence of a league in order that it may be effectually carried on;

198 Q. Is it true that for the successful carrying out of a baseball league you must have some uniformity in dealings between the constituent clubs and the players? A. I do not know that it could not be done in some other way.

Q. What has experience indicated on that subject, if you know? A. I should say that certainly organized baseball has found it the most advantageous way to conduct its business.

Q. When you came to organize your Federal League, did you adopt a uniform playing contract to cover the relations between the players and the clubs for which they played? A. We adopted a form of contract that was modified in almost every instance in some way.

Q. You had a standard form? A. We had a printed form, precisely, yes sir.

Q. You had a printed or standard form? A. Yes sir.

Q. Which represented your normal contract, and then in particular instances you modified certain provisions of it? A. That is right.

Q. Is there any value or advantage to a league organization as making it possible to discipline players, and so get the best service out of them for the purposes of the sport? Can that best be done where there is a league?

Mr. Douglas: Do you mean just for home, if you pardon me for asking the question?

Mr. Pepper: For the purposes of the sport, I said.

The Witness: I do not believe so. I think that college ball players are just as sportsmanlike, and conduct the game on just as high a plane as those ball players who are under contract.

199 By Mr. Pepper:

Q. I am not asking about the question of the plane upon which they play. A. You asked about the disciplining of the ball players.

Q. I want to know whether it is necessary, in the conduct of a professional ball club, that there should be a measure of discipline to which the players are subject? A. Undoubtedly.

Q. Respect for the umpire, and the rules of the game? A. There is no question about that.

Q. The proprieties of play? A. Yes sir.

Q. And the proprieties of conduct when they are in transit from place to place, and so on? A. That is right.

Q. That discipline is accomplished, is it not, by the power of control exercised over the player through his contract? A. Certainly not exclusively so. It is in a measure. A ball player's ambition to get along in his profession, whether he is a gentleman or not himself, all are determining factors.

Q. Of course, the personal equation enters into it. A. Exactly.

Q. But so far as the discipline goes, the disciplinary feature of the organization is an important one, is it not? A. Yes sir.

Q. There have been times in the history of baseball since you have observed it when the discipline became lax and baseball was consequently discredited. Has not that been the case? A. In casual instances that has happened repeatedly through the whole period of baseball.

Q. Was it not a very serious situation immediately preceding the national agreement in 1903? A. You mean as a result of the
200 war between the American and National Leagues?

Q. I mean under the conditions that then existed, was it not true that there was a great popular demand for what was called clean ball, and that the conditions improved materially after the making of the agreement in 1903? A. My recollection is that there was clean ball played in 1894, 1895, and 1896. I do not believe that ball players as a class, since I have been observing baseball, have done anything except conduct themselves as gentlemen. There were periods back there, probably before I took an interest in baseball, before 1892, when that criticism may have been effective.

Q. I am directing attention particularly to the situation from 1900 to 1903. A. The whole business was in a state of uncertainty then. The fight between the National League and the American League—I do not believe the responsible parties then were the ball players so much as the owners of the clubs.

Q. That may well be, but is it not a fact that at that time, and immediately preceding the agreement of 1903, professional baseball, was, to a great degree, discredited in this country? I am not trying to fix responsibility, but just refer to a condition. A. I understand. There was certainly unrest, and the ball players were breaking their contracts, not only the reserve clause, but I think players were taken into the American League who were actually under contract to the National League.

Q. There was a good deal of rowdyism at the games, was there not? A. I do not believe so, not a great deal of it, certainly not.

Q. Have you a clear recollection of conditions at that time?
201 A. Yes, I saw a great many ball games then.

Q. And are you not able, on thinking it over, to say that the condition was substantially as I have indicated at that time?

A. There were about 1,200 ball games played in 1901 and 1902,

each year. I do not presume there was any rowdyism in ten of them. That is my recollection. I do not remember an instance of it.

Q. That is your general impression of the situation at that time? A. Yes sir.

That the Baltimore Club was one of eight equal stockholders in Federal League of Indiana, which was an incorporated company, the capital stock of which was $8,000, but each of the eight constituent clubs was required under the conditions of the franchise issued by the Federal League to pledge or hypothecate its stock with the Federal League; that the stock of the Baltimore club was never in its custody, as one of the conditions of the franchise was that it should be pledged to the central organization for the faithful performance of the obligations of the franchise; that the franchise is a contract between the League and each of the individual clubs and it was uniform as to each of the clubs; that the Baltimore club was obligated to assist in paying the expenses of the central organization, and also to play the scheduled games; that the schedule was made up by a schedule committee, which in the first year was composed from the group of directors; it may be that the by-laws provided for such a committee, and the witness believes there were by-laws of the Federal League.

The witness further testified that the World Series were conducted under auspices of the National Commission, operating under
202 the National Agreement; that they are contests between winners of pennants in National and American Leagues and have consisted of from four to eight games, being determined when one club wins four games; that ten per cent of the receipts of all games goes to the Commission for its administrative expenses; that the players receive sixty per cent of receipts of first four games, the balance of the receipts being equally divided between the two participating clubs.

Q. Then is it not true that, to prevent the contingency of the players having an interest to prolong the series indefinitely, in order to share in the proceeds, after the first four games the sixty per cent is divided between the contending clubs, and it is a matter for their decision as to what they shall do with what they receive? Is not that correct? A. That is perhaps the motive. It puts all the ball players a bit under suspicion in that way. I do not see why that necessarily need be the only method of distributing the receipts.

Q. In point of fact, that is the only way, excepting reliance upon the integrity of individuals, by which, as a matter of organization, you could guard against the contingency is it not? A. The integrity of the ball players is relied upon during the 154 games of the schedule through the entire season.

Q. And is, of course, the basis of the whole sport? A. During my experience with baseball, I do not recollect any instance in which the integrity of the ball players was really in question.

Q. That is largely, is it not, due to two facts, in the first place, the inherent uprightness of the American sporting man, and in the second place, the careful provisions of these instruments for
203 safeguarding him from temptation? A. I do not believe that is the guiding factor, no.

Q. That is the way it operates, is it not? A. Undoubtedly the ball player is straight, yes sir, whether it is the rules and regulations and the fear of the organization in organized baseball that drives the player to uprightness, I have serious doubts. I think it is his inherent will to be upright, and the fact that playing baseball makes an amateur as well as professional, the type of man who is upright.

Q. It is, nevertheless, true, is it not, that for the effective playing of the game something like a quasi-military system of commands and obedience to commands must be enforced, if you are going to get results? A. Absolutely. That is true in every college ball club in the country.

Q. And the degree to which you build up the morale of your team has large influence upon its success as a winning factor? A. Absolutely.

That the stock of the Baltimore club was popularly subscribed; that the capitalization was increased; that the par value of the stock for perhaps a week or ten days was $100 and was then reduced to $10 about November 14, 1913; that the number of directors was increased from eight to twelve and from twelve to forty; that there was a directors' committee for employing the players, but the control and discipline of players was left in a large measure to the manager, though the directors still retained some voice in that regard; that there was an attempt to work out the problem by a government by committee.

The Baltimore club had not played as a minor league, the only thing that invited the Baltimore club into the Federal League
204 being the idea that it was to be given major league baseball; that the better players are in major leagues, but very frequently it happens that minor league contests are of equal interest; that citizens want major league ball because they want the best that is obtainable; that the difference between the major and minor leagues is the quality of the players and of the playing of which they are capable.

Witness was asked whether in the fall and winter of 1913 and 1914 the demand for major league players was greater than the available supply of players of that standard, and he replied that there are all sorts and grades of ball players, not more than ten or fifteen great star players and the grading off from that to the amateur on the lot is so gradual that it is almost imperceptible; that there are any number of players in major leagues who are not of major league capacity and any number of players in minor leagues who have possibilities of development if given the opportunity.

The witness was then asked what he knew about the supply of skilled players in the autumn of 1913, relative to the demand for them, that is, players of talent that were known and available, and he answered that there were approximately 400 ball players in the National and American Leagues who were labelled major league ball players, and when the Federal League came into competition there were twenty-four clubs in the market instead of sixteen for the 400 players. In answer to the question whether it was not extremely difficult to get enough first class players to make a well balanced

major league team in each of sixteen clubs, witness replied that if there were four major leagues claiming to be major leagues, and willing to pay the compensation usually paid a major league player, there would be any number of boys who stay in colleges who would endeavor to be professional ball players because of the oppor-
205 tunity to play in large cities, and there would be that many more opportunities to bring men up from the lower ranks.

The witness was then asked and answered the following questions:

Q. Did you, in pursuance of that belief, seek to recruit your Baltimore team from the sources you have last referred to? A. Our Baltimore team was very largely recruited from the better ball players in the minor leagues.

Q. I understand you to say that you referred to the undiscovered talent outside of professional ball. A. No, I said there were any number of ball players within the minor leagues, in addition, of course, to the fact that there are some college men who would go into professional ball.

Q. But apart from what is the best policy for increasing the supply at any time, the fact is, is it not, that in the fall of 1913 there were not enough recognized first class players to supply both the then two existing leagues and also your Federal League, if it should become a major league? A. What do you mean by first class players—players of the type of Walter Johnson, Cobb and Collins? I do not believe there are enough of those to make up one whole ball club.

Q. I mean the type you had in mind when you said that the Baltimore club desired to play Major League ball. A. It seems to me that that was very largely a matter of psychology. You tell the public, first of all, that "We are going to get the very best ball players available, and the ball players that we gather together in this league, that we intend to call a major league, are not subject to draft, or sale, except upon our volition." From the viewpoint of the minor league club owner and the minor league public the ball players whom the club has developed to be real good ball players are subject to be sold or drafted.

Q. Mr. Goldman, perhaps it is my slowness in following you, or perhaps it is that you have not understood my question. A.
206 I may not have answered it entirely.

Q. My question did not call for just that kind of an answer. What I wanted to know was whether, in the fall of 1913, it was true that the supply of players whom you describe as of major league caliber was insufficient for the needs of both the American and National leagues, on the one hand, operating under the National agreement, and of the Federal League, which was then proposing to enter the field of major league ball? A. I do not believe you could answer that question categorically. I do not believe that question can be answered intelligently by "Yes" or "No." It seems to me that the whole situation depends upon what the public think it is getting. There are any number of ball players, in my judgment, in the major leagues who do not in any sense compare with other ball players in the major leagues. The comparison is almost as great as

the difference between the secondary class of ball players in the major leagues and the ball players in the lower minor leagues.

Q. But, after all, the demand is for players of certain quality or caliber, is it not? A. Yes, for the very best.

Q. Whether you describe it as a matter of psychology, or as you please, is it not a fact that the supply of the kind of players that the public will go to see, and for whose exhibitions of skill they will pay on a major league standard, were inadequate in the fall of 1913 for the needs of the two older leagues and also for yours? A. No, I will not agree to that at all, for this reason, that if influenza struck every ball player in the two major leagues during 1913, you could have taken the next rank of ball players, called them major league players, and the public would have gone precisely in the same way to see them, because they were the best available.

Q. Let us see. Am I right or wrong in my recollection that the Federal League went to the Cincinnati club in mid-season, at a time when Cincinnati was leading its league in competition, and
207 succeeded in taking from the Cincinnati club three of its players, and thereby caused it to drop to last place. That is the fact, is it not? A. Who were those three players?

Q. Marsans, Davenport and Johnson. A. Those three players played on other clubs in the Federal League, there is no question about that. Whether some Federal League club——

Q. That is not what I asked. A. You simply want to know about the pennant race, but you have involved your question with that statement.

Q. If you object to the question, I will certainly reframe it. Let me put it this way. Would it have been possible for the Federal League to have accomplished its desire to become a major league organization without taking from the Cincinnati club the three players that I have mentioned, who were then under contract with the Cincinnati club, and playing for it, or were you driven by the shortness of the supply to do the thing that I have referred to? A. If you grant that the two major leagues that were then existent had selected the very best talent that existed in baseball, if we wanted to actually compete for public favor by having equal playing strength, undoubtedly we were driven to the ranks of organized baseball for those players.

Q. That is an assumption that is based on fact, is it not? A. Yes, I think so.

Witness further testified that the players who at that time constituted the playing strength of organized baseball got their training in various places, at college, on the back lots, and in minor leagues; that the majority of major league players came from the minor leagues; the witness thought that the greater the ball player the less opt he is to go through the minors but there is no question but that the minor leagues have been the means of training a great
208 many major league players for the last fifteen years but witness has no means of telling what percentage of players in Organized Ball have come up by that route, that major leagues are

not permitted under the present regulations to own minor league clubs;

The witness was then asked and answered the following questions:

Q. I am not referring to the purchase of their stock, but what payments of money are made in the operation of the system by the major league clubs to these minor leagues, and for what purpose? A. They draft, from these minor leagues, a limited number of ball players. They buy from them a limited number of ball players. They send back to them a limited number of ball players, and they sell to them a limited number. Of course, the comparison is so different in size, the major leagues employ about 400 ball players, and these minor leagues upwards of five to ten thousand.

Q. I suppose you have no way of knowing the amounts of money which the major league clubs, in three or four years, we will say, before the Federal League entered the field, had paid to the minor leagues under the operation of the draft and purchase system? A. No, I neither know the amounts they paid to them, or the amounts they received from them.

Q. Would you be surprised to know that the total for those few years was equal to about two million and a half dollars? A. For how many years?

Q. For three or four years, taking it at the most. A. You mean the amount paid or the amount received?

Q. The amount paid by major league clubs to minor league clubs in consideration of the exercise of the draft right, and the exercise of the purchase right. A. Do you know offhand the amounts—I am simply asking for purposes of comparison—the amount that was paid by the minor leagues to the major leagues for the players going the other way?

Q. I think it is an important factor. I have not got that.

The Court: Whether he would be surprised or not does not seem to me to be of any evidentiary value to the jury.

Mr. Pepper: Exactly, your Honor, and I think with regard to the question of fact, as to how much was paid, if it becomes ma-
209 terial we will prove it otherwise.

By Mr. Pepper:

Q. With regard to the difference between draft and purchase, is it this, that under the system in organized ball a club of higher classification has a right to insist that a player be ceded to it from a club of lower classification upon the payment of a scheduled sum? A. With limits, of course.

Q. With limits. A. The major league clubs, for instance, can call for one player a year, as I understand it, from Class AA League, even though there are twenty players of the club who are capable of playing major league ball.

Q. But within the limits it is not optional with the club of lower classification to respond to the draft? It must respond? A. It must deliver a player, as I understand it.

Q. Whereas, in the case of purchase, that is a question of bargain between the purchasing club and the club which previously retained the player's services? A. It is a matter of bargain between the clubs. The player has nothing to do with it.

Q. The player has nothing to do with it, because his compensation is fixed by contract? A. Partly by contract. It is fixed finally, of course, by contract, but it is not, in the strictest sense, a free negotiation, because he has only that one employer from whom to seek employment.

Q. We will come to that when we come to deal with our reserve clause, presently.

With regard to the draft, it is true, is it not, that the right of draft on the part of a club of higher classification prevents the club of lower classification from retaining permanently in minor league ball, a player who has the capacity to rise, but whom the lower club
210 would like to retain? A. In the judgment of the club above, yes, sir, not always in the judgment of the ball player himself. I mean to say there are many ball players who think they are capable of major league standards. There are many of them who say they could get in the major league clubs if they were not blocked.

Q. But assuming that some other criterion is more reliable than a man's own self-estimate, it is true that the draft system prevents the club of lower classification from retaining indefinitely a player that the upper clubs regard as having the capacity for bigger things? A. That is still subject to limits. Suppose, for instance, you take one of the minor league clubs, a Class AA club, and they had twenty ball players, all of whom were capable of major league standards of play. It would take twenty years to get all of those ball players into the major league club. It is just impossible, because the player would not be competent to play that long.

Q. It is always true that these principals have a limit to operation, but to the extent that they work, the proposition is, is it not, that there is no option on the part of the club of lower classification to resist the draft if the conditions are complied with? A. That is right, as to the limit of the number of players.

Q. Within the limits; and what the limits are appear from the rules and regulations? A. Yes, sir.

Q. We will make those a matter of argument at the proper time. The only limit on the number of players to be drafted applies in the case of the "AA" minor league teams. Is it not so? A. The very highest ranks of minor leagues.

Q. In all the classification below that, the number of players that can be drafted by major leagues is unlimited? A. Yes. The only limitation on that is the fact that the major leagues must cut
211 down the size of their clubs in accordance with the rules, to a certain player limit.

Q. But assuming a need for first class players in the major leagues, there is no limit to the exercise by the major league clubs of their draft rights in any of the subordinate classes, excepting "AA"? A. That is right. Of course, it bears a great many limitations, Mr. Pepper. If you suppose that there are 4,000 ball players in the ranks

below "AA," and that the major leagues could only employ 400, they would never get all the ball players out of those lower classifications who were competent to play.

The Federal League's contracts contained an optional clause; thinks there was only one form of option or reserve clause. When negotiations with players first began by the Baltimore Club, witness thought it was required to pay them, because of the competition, much more than players were worth, for a short period, and calculated that part of that was undoubtedly paid in order to secure a club, and in order to assure the permanence of the organization. Contracted for three years in a number of instances under absolute contracts with no opportunity to break it during those three years and had an option on the player's services for seven years at the expiration of the three, with an increase from year to year of 5% in his salary. Started off by paying the player a very large salary. Asked if plaintiff also had straight option contract, which gave ten years' rights, without initial obligation to keep player as long as three years, witness said "We had the right, if we employed entirely inexperienced players, to release them on ten days' notice."

In answer to question whether Federals were enabled to pay the very large salaries to the players who came to them from Organized baseball because they did not have to pay the draft or pur-
212 chase prices, the witness said they would have been glad to have substituted the privilege of paying the draft price.

The witness further testified that plaintiff acquired a lot of players at salaries largely in excess of that which they had been receiving, and did not contribute anything to the cost of training these ball players, that plaintiff was profiting by all their experience as players from the time they were children until we got them; that the players who were employed by Baltimore were men who had been in the ranks of Organized Baseball for years, to a large extent the older men—the veterans—"men who in three or four years would have been through their experience as ball players"; that the reason the players took the chance was because they only had a few more years of playing in contemplation at that time; asked "and you tied them up for the balance of the time," witness answered "we contracted to pay them a salary that was absolute whether they were capable of playing for the time we thought they would be or not."

Asked if the ball players obtained by the plaintiff club were not in every instance parties to contracts with their preceeding employers containing the reserve clause then in force in Organized Baseball, the witness answered that every professional baseball player had the reserve clause. Plaintiff did not take anybody from Organized Baseball who was under any other form of contract, so far as witness knows.

Asked whether or not it was true that every one of the men employed by Baltimore had been a party to a contract under which it was stipulated that part of the compensation that he had received was consideration for his promise to reserve himself, witness said he did not think that form of contract was in effect at the time; that the

form of contract for the year 1913 is the one that controlled
213 the players at the time we contracted with them, the form like the Foster Contract of 1913. I do not believe the plan of separating his salary into those two elements had been adopted. Undoubtedly there was a reserve clause in every contract. That was the system of Organized Baseball. "That is the system by which they held together these five or six thousand ball players," the entire body of ball players.

Asked "When you say the entire body, you know, do you not, that the reserve clause was present only in the major league contracts; it had no place in any minor league, had it?—to which witness answered, "I have not examined that contract for quite a little while—but the reservation applied to all of them." That no player who violated his reservation in a major league club could afterwards get employment in a minor league club in Organized Baseball; that he was not certain that the reserve clause applied only to major league contracts, and was not prepared, without examining the minor league contracts again, to say that the reserve clause was present in any form excepting in major league contracts.

Upon being called to the stand the following day witness stated that in the meantime he had gone over the matter very carefully and that after an examination of minor league contracts, and an examination of the rules and regulations, and the agreement of the National Association of Minor Leagues, he found there was a reserve clause in practically every contract entered into, both by minor and major league players.

The witness was then asked the questions and gave the answers following:

"Q. Now, is it one of the operations of this reserve clause that it protects weaker clubs in a league against the richer and
214 stronger clubs? A. With intelligence—because I do not believe that any richer club would foolishly gather together all the star ball players. It would make the race so absurd that he would not do that.

Q. Let us assume in our examination that you and I share the same idealism with regard to human nature, and that we are talking about matters of organization. It is true, is it not, that so far as organization goes it is the operation of the reserve clause coupled with the limit on the list of major league players that a club can retain that prevents the richer and more prosperous club from taking away the stars that are the chief assets of a club not so prosperous? A. I do believe, Mr. Pepper, that the other condition plays a very important part in it, and would even in the absence of the reserve clause. I do not believe that intelligent business men would make the race so lopsided that they would have all the stars in one city and the mediocre ball players in another——

Q. As I say, I do not want to dispute with you on that question of psychology; but so far as organization goes it is, as I say, is it not, true that conjoint operation of those two provisions, the limitation of the list and the presence of the reserve clause, makes it impossible for a richer and more prosperous club to take away from a poorer and

weaker club the ewe lamb? A. It makes it impossible for any club to take away any player from any other club.

Q. It is under the operation of that system that it has become possible for individual clubs to build up their reputation through certain stars, for instance, the way Detroit has developed and held onto Ty Cobb? A. Yes, sir.

Q. You would not have much doubt, would you, but that for the operation of one or both of these provisions, New York or Boston or some other place would have acquired Ty Cobb long ago from
215 Detroit? A. They do acquire the great stars by purchase. The Chicago club got Eddy Collins from Philadelphia.

Q. Certainly, by purchase; but that is a different thing. A. I mean by that, of course, that a richer city can get a ball player if it is willing to pay enough.

It is true that in the contracts in force in 1914 and subsequently the reserve clause was operative only for the year immediately following the contract year, but when the player signed the contract for the following year it contained a new reserve clause, which works out the system continuously, witness thought. Witness' idea is that no ball players have ever signed without the reserve clause; that it would make a difference in witness' view of the reserve clause if it developed that the player was bound only for the year immediately subsequent to the contract year, and as a matter of practice, became a free lance at the end of the second year.

The system of assigning players from one club to another, even without the player's consent, is the only one that has ever been tried. Does not know that this element must exist, nor whether the player might not have some freedom to determine whether he was to work for some particular employer—whether that might not be a more advantageous system. It has never been tried. Did not try it in the Federal League. Asked if the Federal League did not treat the contracts of its players as assignable under the terms of its rules and regulations, the witness answered: "They were in a number of instances assigned, yes, sir. I think they were treated in that way. Asked if the plaintiff club did not in some cases have contracts between players and individuals in the club organization treated as the individual asset of the man in question, who could then assign it for cash to anybody whom he pleased, the witness answered: "We
216 did, with the volition of the players in each instance—three players,"—Hickman, Harvey Russell and Owens. The Baltimore club did assign ball players in a few instance to other clubs in the Federal League. As a matter of fact it obtained the consent of the player, except in the instance of one player who did not go, but the consent of the player was not part of the Federal League system; the system certainly would have permitted the assignment of the contract of a ball player; that the Federal League system required that a copy of every contract which any constituent club made with a player be filed with the central organization, a copy given to the player, and a copy retained by the club.

Foster's salary in 1914 was raised over his contract of 1913, but this, witness thinks, was uniformly done throughout the major

leagues in the face of the Federal League's effort to get ball players. The result of the Federal League offering larger compensation to players made it necessary for their employers to raise their salaries.

"Q. So the result of your offering larger compensation to the men who were under reserve, was to make it necessary for their employers to meet your raise, in order to keep their people, is that correct? A. That is the way they met us, yes, sir."

The witness further testified that Knabe was one of the Baltimore players in 1914 and 1915. He had come from the Philadelphia National League Club. That he knew the history of W. R. Walsh, he came to the plaintiff at the time he had been sent from the Philadelphia National League Club to one of the minor league clubs in organized baseball, probably in the discretion of the management of the Philadelphia Club he was not regarded as a player of major league rank and selected him as one they wanted to send to a lower classification. Witness thinks in this instance there was probably some compensation in players or cash for the player to the Philadelphia National League Club from the club of lower classification.

217 Q. Is it true that before the man against his will can be sent to a club of lower classification, all the clubs in the league from which he comes must first be asked to sign waivers on him? A. That is what the agreement provides.

Q. Also, in the other leagues, that is the object of the national agreement? A. Yes, sir.

Q. So that if a man is no longer needed by the club that is using him and they propose to send him to a club of lower classification in a minor league, the player is safeguarded, is he not, against any unfair judgment on the part of that one club by having 15 other clubs given an opportunity to take him and keep him in major ball if any one of them wants him? A. Subject to payment of the waiver price, I think. I mean, in other words, if they think he is good enough and some are unwilling to pay the waiver price, he would go back to minor league.

Q. Yes; but any man who is clearly a player of major ball calibre can be sent to a minor league only with the unanimous concurrence of all sixteen clubs? A. And the unwillingness on the part of any one of the sixteen clubs to pay to the club sending him—I think the price is $2,500 before he can be sent back. Is not that the correct amount?

Q. It is, of course, true, is it not, that the question is one of judgment in any case as to whether the waiver price is worth paying for the sake of retaining the player? A. Largely; yes, sir.

Witness does not happen to know whether Walsh had come through three or four minor league clubs on his way up to major league ball, nor his history in regard to progressive increases in salary.

218 Witness was then asked if he knew what had been the baseball history of Mr. Kauff, whether or not he came from the minor leagues, and he testified that Kauff was in a minor league when he became a member of the Federal League; that he

thinks he came from the Indianapplis Club in Organized Baseball, and probably went from Hartford to Indianapolis; that the only contract witness thinks he was under was a reservation by the Indianapolis club; that he understood that the New York Club had stipulated that they would pay a certain sum for the purchase of Kauff, provided the Indianapolis Club, from which he came, was able to furnish the New York Club with a contract signed by Kauff binding him to the Indianapolis Club, but that no such contract existed between the Indianapolis Club and player Kauff and therefore the New York Club was not bound to pay the Indianapolis Club the agreed purchase price because the conditions of the contract between the New York Club and the Indianapolis Club had not been fulfilled. Witness further stated that the reason for mentioning the Kauff case was that in the first instance during the existence of the Federal League competition the National Commission said that Kauff was not a man who respected his contract and therefore not a fit member of Organized Baseball, and in the second instance it restored him fully to his standing as a result of the terms of the Peace Agreement, that is, restored him to the Federal League Club under the terms of the Peace Agreement in order that the Federal League would sell him to Organized Baseball. Asked if it was not a fact that Kauff had signed up with the Brooklyn Federal League team and during the New York playing season turned up on the New York National League grounds claiming to have no contract which bound him to the Brooklyn Federal League Club and he was taken as a player by the New York National League Club, and that is was so stated in the report of the National Commission, the witness answered "Yes," and further stated that he thought as a matter of fact that
219 what the New York Club endeavored to do was to break up the contractual obligations between the Brooklyn Federal League Club and Kauff, but the National Commission refused to sanction it. Again asked if it was not a fact that in the first place Kauff had made a contract with the Brooklyn Federal League Club, and in the second place that he had thereafter sought to enter the services of the New York National League Club and that the National League refused to permit the violation of the Federal League Club—refused to permit the New York Club to take him into their employ—and sent him back to the Brooklyn Federal League team, the witness answered "Yes."

220 The Witness then read Article 15, Section- 1 and 2 of the National Association Agreement of the National Association of Professional Baseball Leagues; article 8, section 1; article 20 section- 1 and 2; article 26, section- 1, 2 and 3; and portions of Contract for Class AA Players. Said Agreement and Contract were then offered and received in evidence as follows:

*National Association Agreement.*

Of the National Association of Professional Baseball Leagues, adopted at Chicago, September 6, 1901. Revised and adopted at

New York, October 24, 1901. Revised at St. Louis, October 22, 23, 24, 1903. Revised at New York, October 25, 26, 27, 1904. Revised at Chicago, Jan. 9, 10, 1906. Revised at New York, Jan. 8, 9, 10, 1907. Revised at New York, October, 29, 30, 31, 1907. Revised at Chicago, Nov. 10, 11, 12, 1908. Revised at Memphis Nov. 9, 10, 11, 12, 1909. Revised at Chicago, Nov. 15, 16, 17, 1910. Revised at San Antonio, Nov. 15, 16, 17, 18, 1911, at Milwaukee, Nov. 12, 13, 14, 1912, at Columbia, Nov. 11, 12, 13, 1913, at Omaha, Nov. 10, 11, 12, 1914, at San Francisco, Nov. 9, 10, 11, 12, 1915, at New Orleans, November 14, 15, 16, 1916.

Article 1. This instrument shall be called "the National Association Agreement of Professional Baseball, Leagues."

Objects.

Article 2. The objects of this Agreement are:

1. *The* perpetuate baseball as the national game of America, and to surround it with such safeguards as to warrant absolute
221 public confidence in its integrity and methods.

2. To promote and afford protection to such professional baseball leagues and associations as may desire to operate under its provisions.

3. To promote and protect the interest of Minor League ball players and to secure to players advancement in their profession for skill and expertness.

Governing Power.

Article 3. The governing power under this Agreement, which shall be called "The National Board of Arbitration", shall be vested in ten representatives selected by the National Association of Professional Baseball Leagues, three of whom shall be chosen from Class AA Leagues, two from Class A, three from Class B, and one each from Class C and D.

The Annual Meeting.

Article 4. Sec. 1. The annual meeting of the National Association shall be held on the second Tuesday after the first Monday in November of each year, the place of meeting to be designated by the National Association at its preceding annual meeting, at which time the representatives shall elect a President, Vice-President, Secretary and Treasurer and ten members of the National Board of Arbitration, (Secretary and Treasurer, at expiration of his term of ten years, and President, Vice-President and ten members of the National Board of Artbitration, at the expiration of the their respective terms of five years from November, 1915) and transact such other business as may properly be brought before it. The Secretary of the National Association shall be Chairman, ex-officio of the National Board of Arbitration with power to cast the deciding vote in
222 case of a tie. The annual meeting shall select a member of the Playing Rules Committee.

Sec. 2. Each League member shall be entitled to one vote in the meetings of the National Association, the President of the league to cast the vote of the league unless the delegates present from that league shall select some other person from their number who shall have the right to cast the vote.

On or before the 25th day of October the Presidents of the respective clubs of the National Association must submit to the Presidents of their respective leagues, the names of the officers or directors of their clubs who will be entitled to admission to the meetings of the National Association. The Presidents of the leagues will in turn mail said lists to the Secretary of the National Association in time to reach that office by November 1st. All persons so certified shall be entitled to seats on the floor and to participate in the deliberations of the meeting, but no other persons shall have such privileges without having first obtained the approval of their credentials by a majority vote of the Association.

Sec. 3. The President shall preside at all meetings, issue all calls therefor, and at all meetings of this Association where a tie vote shall have been cast, shall himself cast the deciding vote.

Sec. 4. In case of a vacancy in any of these offices, the same shall be filled by the National Board until the next annual meeting.

Sec. 5. Special meetings may be called at any time by the President, or upon the request to him in writing; of seven or more leagues. No business other than that specified in the call shall be transacted at such special meeting.

Sec. 6. At least one session of each annual meeting shall
223 be devoted to executive business.

## Duties and Authority of the National Board

Article 5. Sec. 1. The general enforcement of this Agreement, the protection of rights thereunder, the determination of all controversies, as hereinafter provided, and generally the regulation of all things within the scope of this Agreement are each and severally conferred upon and committed to the National Board of Arbitration.

Sec. 2. The Board may adopt rules and regulations prescribing the duties of each and all of its members and officers, its methods of procedure, and the general transaction of its business.

Section 3. It shall be the duty of the Board, and it shall have full and final jurisdiction; (No member of said Board shall sit or vote in the trial of a cause in which his league is interested); to hear and determine all disputes and complaints between associations and clubs; between one club and another; members of the same or different associations; between National Association clubs and National Association players or managers, and, in addition thereto, all disputes and complaints arising under, and all of the matters involving the interpretation of the National Association Agreement or the disposition of the rights thereunder, and may hold special meetings for these purposes when required. The Board shall have power also to pass upon any question brought before it by a club member or members of any organization in the National Association where unjust

discrimination has been made against any club or clubs, and if, upon a hearing, the Board finds that such charge or charges are true, it shall have the power to impose such fines or penalties as it deems proper, or to forfeit and terminate the privileges of such
224 organization under this Agreement.

Power to Impose Fines.

Sec. 4. In the performance of its duties the Board shall have power to impose fines or penalties upon National Association clubs, club officers, players, managers, scorers and umpires, and to suspend any such organization or person from the protection and privileges of the National Association Agreement in any instance in which, in its opinion, it or he shall have been guilty of conduct detrimental to the general welfare of the game, or in violation of the letter or spirit of the National Association Agreement.

Decision Final.

Sec. 5. Its decision shall be final over any and all matters within its jurisdiction.

Reinstatements.

Sec. 6. It may remit fines and penalties and reinstate any person or body suspended, under rules laid down by the National Board.

Assessments.

Sec. 7. It shall have the power to make such reasonable assessments upon National Association clubs or associations as may be necessary to defray the expense incidental to the performance of its duties and the enforcement of this Agreement.

Rules and Regulations.

Sec. 8. It may make all orders rules and regulations for the performance of its duties and the exercise of its power, and to accomplish the purpose in view, may amend and supplement the same from time to time; provided, notice of all changes, amendments or supplements be given to all organizations party to this Agree-
225 ment, by mailing a copy thereof to each club in every league having membership in this Association.

Decisions Promulgated.

Sec. 9. It may cause its proceedings or rulings, or any other part thereof, in any case which may be deemed of sufficient importance to serve as a precedent, to be published in such a manner as may be prescribed.

Presentation of Claims.

Sec. 10. Whenever any body or person shall desire to submit any matter for the consideration of the Board, it shall be presented within one year of the occurrence of the act, or of the maturity of the claim, to the Secretary by a concise statement thereof, and accompanied by such evidence as may be in support of such statement. Notice shall be given to any other body or person interested in the matter to make answer and to present appropriate evidence in support thereof. If such answer is not received by the Secretary within fifteen days of said notice, judgment by default may be rendered. In the event of any league, club, or individual being in default on any obligation, the Secretary of the National Association is hereby authorized to deduct the amount and adjust said claim from any moneys passing through his hands to the credit of said defaulting league, club, or individual.

Provided that a manager or player who has a claim against a club shall first file his claim against the club with the president of the league of which the club is a member. The president shall, within five days, rule on such claim and notify the claimant of the decision. Either party may appeal from the ruling of the President to the National Board in the same manner that other claims are filed
226 with the National Board of Arbitration.

When any finding of the National Board shall have been made in favor of any player or member of this organization, against a member of this organization, the secretary shall immediately notify the member against which the judgment has been rendered, which member shall make settlement in full within fifteen days. If the settlement is not made within fifteen days, a cumulative fine of ten per cent per month shall be added to the claim, and if the amount of the claim and penalty be not paid within 105 days from date of the finding and notice, protection shall be withdrawn from the offending member.

League Membership.

Article 6. An application for membership and protection under this Agreement must be made in writing or by telegraph to the Secretary of the Board. If made by telegraph it must state the name of the league, the cities comprising the circuit and have the signature of the President of the League, which must be followed within ten days by a written application to the Secretary of the Board, stating the name of the circuit, the representatives of the respective cities, the location of their business offices and playing grounds, if practical, the monthly salary limit for its club teams and a pledge or agreement for the maintenance of said salary limit and the faithful performance of its obligations under this Agreement, its own Constitution and By-Laws, and its other contractual obligation, which club membership, location of club officers and playing grounds, salary limit; Constitution, Agreements, By-Laws and pledges, shall not,

after approval by this Board, be changed, modified, altered or
227 released, without notifying the Board, which may within ten days thereof refuse to ratify such change, alterations or release.

Classification of Membership.

Article 7. The Board upon the receipt of an application for protection and membership under this Agreement, shall after consideration and approval, determine the class under which the applicant shall be admitted, the said classification to be based upon the aggregate population of the cities composing the league, according to the last published official census preceding the application, and membership fee shall be an amount fixed by the Board for the leagues of that class.

League Representation.

Article 8. Each league shall be entitled to one representative of its own selection, who shall have the right to appear before the Board upon any or all matters pertaining to its interest or welfare, but the Board may, at its discretion, invite additional representation in the adjustment of any matter which may be brought up before it.

Fee for Protection and Membership.

Article 9. The fee for membership and protection under this Agreement, with the right for reservation subject to Articles 10 and 11, shall be:

For each club in Class AA, the sum of $200.
For each club in Class A, the sum of $100.
For each club in Class B, the sum of $50.
For each club in Class C, the sum of $25.
For each club in Class D, the sum of $15.

Such payments to be made within thirty days from the date of filing the written application for membership and annually thereafter on or before the first day of September in each year.

228 Selection of Players by Leagues.

Article 10. For the purpose of enabling players to advance in their profession and to assist in building up leagues, a club of a higher class shall have the right, after September 22, of each year, to select players from a league in a lower class during the following period:

Class AA, between Sept. 22 and Sept. 27.
Class A, between Sept. 30 and Oct. 4.
Class B, between Oct. 7 and Oct. 12.
Class C, between Oct. 15 and Oct. 20.

Upon the payment to the Secretary of the Board the sum specified in Article 11.

## Terms for Selection of Players.

Article 11, Sec. 1. Clubs from a higher class selecting players from leagues of a lower class shall pay to the Secretary of the Board for the benefit and account of the club from which the selection is made, the following sums, viz:

The Class AA Leagues shall pay for players in Class A leagues, $1,000.

The Class AA Leagues shall pay for players in Class B leagues, $570.

The Class AA Leagues shall pay for players in Class C Leagues, $500.

The Class AA Leagues shall pay for players in Class D Leagues $400.

Class A Leagues and lower classifications shall pay the following sums, full payment to be made at time of selection, provided, however, that not more than two players shall be selected from each club of said class. Provided furthermore, that the Class AA Leagues are prohibited from drafting from any Class A Club that has al-
229 ready lost one Player during the drafting period to a Major Club, and,

Not more than one player shall be drafted from each club in Class A by clubs in Class AA; not more than one player shall be drafted from each club in Class B by clubs in Class AA; not more than one player shall be drafted from each club in Class B by clubs in Class A.

For players in Class B, $600;

For players in Class C, $400;

For players in Class D, $300;

No player drafted from one club in any league, by a club of a higher classification, shall be turned over to another club in any league of the same or lower classification, unless the club from which he was drafted shall waive claim to repurchase at the draft price.

Cancellation of drafts by National Association Clubs is prohibited except that the respective leagues shall have the privilege of cancelling drafts within the five days drafting period of that respective classification.

The Secretary shall notify League Presidents by wire if desired of their league drafts.

Sec. 2. Clubs losing players through selection by draft shall immediately turn over to the selecting club, the contract of the player so selected. Failure to forward such contract to the Secretary within fifteen days will subject such club to a fine of $25; the Secretary to hold in his possession the draft money received for such player or players until his contract shall have been received, and to deduct from said draft money any fine which said club shall have incurred by its failure to file with the Secretary said player's contract within the fifteen days prescribed.

Sec. 3. The control of the services of umpires shall be
230 vested in the respective leagues in which such umpires shall be employed, and their services shall be subject to sale or draft

under the same conditions, at the same price, and at the same time as it is prescribed for the drafting of players, the money received therefrom to be paid in the same manner as is paid for drafted players—such sum to be for benefit of the League Treasury.

Following prices shall prevail for drafts:

| | | |
|---|---|---|
| Class AA | from A | $300 |
| | B | 250 |
| | C | 200 |
| | D | 150 |
| Class A | from B | 200 |
| | C | 150 |
| | D | 100 |
| Class B | from C | 150 |
| | D | 100 |
| Class C | from D | 50 |

Salary Limit.

Article 12. Sec. 1. The maximum monthly salary limit, per club, of the several Leagues shall be fixed by the individual leagues, and said maximum limit shall at once be filed with the Secretary of the National Board.

After the opening of the championship season in each of the leagues hereby affected, it shall be the duty of the National Board to enforce said salary limits.

Sec. 2. Upon complaint of any league club that certain leagues or clubs are violating said limit, it shall be the duty of the Secretary of the Board to arrange for a meeting of the league of which the offending club or clubs are members, and said offending clubs must submit their books for the inspection of the Secretary of the National Board, or such member of the board as he may delegate to represent him at such meeting, and upon it being shown to the satisfaction of the Secretary, or his representative, that said salary limit is be-
231 ing exceeded, the offender or offenders shall be given ten days in which to readjust players' salaries so as to get within the maximum limit prescribed by that league.

Any club failing to comply with the decision of the Secretary, or his representative, under this section shall be subject to a fine of $25.00 per day for every day it fails to comply, said fines to be converted into the treasury of the National Association.

Sec. 3. Clubs under the protection of this Agreement are strictly prohibited from advancing any money to players on account of salary, except for the purpose of transportation.

Sec. 4. Each separate league, a member of this Association, shall have the exclusive right and power to be the sole judge of its player limit, salary limit and the qualifications of its individual players on each club in so far as the same does not conflict with the National Agreement.

All rules adopted by any league in this Association that appertains to the salary limits, number of players or qualifications of play-

ers, must be filed with the Secretary of the Board and that it shall be the duty of the Board to enforce same.

Sec. 5. Each club member of respective leagues below Class A shall deposit on or before March 15, of each year (and in case of organization of new leagues after above date, deposit must be made within 15 days after protection for territory has been granted) with the President of said league a cash sum to be held in trust by said President as a guarantee of players' salaries and all other obligations, and not to be used unless the club defaults. Money to be returned to all clubs who live up to their obligations on or before
232 November 1, of each year, deposits to be as follows: One-half of the maximum salary limit adopted by each league. League Presidents to notify the Secretary of the National Association of the receipt of such deposit.

Release of Players by Purchase.

Article 13. Any club member of this Association may negotiate with a club member of another league, party to this Agreement, for the release of a player from another league to take effect after October 1, of the same year, or for an immediate release if the constitution of such league permits, and such release shall at once be filed with and promulgated by the Secretary of the Board and become binding upon both clubs party to the transfer.

Any proven agreement for the purchase of a player under option by telegram or letter shall immediately become binding, and any club failing to file optional agreements with the Secretary of the National Association within ten days shall be subject to a fine of $50.00.

Article 14. Any club member of a league, party to this Agreement, may at any time during its championship season negotiate for the immediate release of a player from a club member of another league, where the league constitution of the releasing club permits, and such release, if secured, shall, when filed with the Secretary of the Board, become binding upon both clubs party to the transfer, providing the salary of the player so transferred during the championship season shall not be reduced during the balance of the season, unless he be transferred to a club of lower classification.

The sale of the release of a player who has been seriously injured during the playing season shall be null and void unless the selling club notify the buying club of such injury. No release by
233 purchase shall be legal or claim valid for the purchase unless the sales agreements are filed in the Secretary's office within ten days accompanied by a check. No claim in violation of this rule shall be considered provided, however, a formal agreement in writing to purchase services must be carried out.

"Farming" Prohibited.

Sec. 2. The practice of "farming" players is hereby prohibited. Any club employing the services of a player "Farmed" shall at once be penalized by the National Board of Arbitration.

Contracts.

Article 15. Sec. 1. All contracts between clubs and players shall be in writing in the form approved by the National Association. An informal contract, whether evidenced by telegrams or other writing, shall be valid for a period not exceeding fifteen days, but a formal contract must be tendered by the contracting club to the contracting player within said fifteen days. The failure of the club to so tender such formal contract will release the Player from all contractual obligations thereunder, and the refusal of the player to execute such formal contract, when so tendered, shall extend the validity of his informal contract until he shall execute said formal contract, but he will not be eligible to play until he signs formal contract. "Terms accepted" must be filed with the Secretary of the Association within ten days.

Sec. 2. All contracts used between National Association clubs and players shall be uniform as to phraseology except that Class AA Leagues may adopt their own form of contract subject to the approval of the National Board of Arbitration of the National Association. Non-Reserve contracts shall not be entered into without
234 the consent of the National Board of Abritration of the National Association. The Secretary of the National Association shall notify the Secretary of the National Commission of any such Non-Reserve contracts. All blank contracts shall be procured by the Secretary of this Association and furnished the various league members, free. Each class shall have a distinguishing color. All signed contracts with players shall be immediately forwarded to the Secretary of the National Association and made a matter of record in the Secretary's office. Failure to file with the Secretary of the National Association the contract of any player within thirty days after the time such player joins said club, shall subject the club to a fine of $25 for each and every offense; the Secretary to collect any and all fines through the President or Treasurer of the league of which the offending club is a member. After recording contracts the Secretary shall forward same to the respective league presidents.

Sec. 3. No player will be permitted to participate in any championship game until he has first signed a contract.

The penalty for violation of this section shall be the throwing out of the records of any game won by the club while playing a player who has not signed a contract. Any games or games lost, however, must stand in the records and further action by the National Board on an appeal by such player for release from reservation.

Unlawful Contracts.

Article 16. Sec. 1. No club shall enter into negotiations or contract with a player under contract to another club without the latter's consent. Any club violating this Article shall be fined by the Board not less than $100 or more than $250.

235 Sec. 2. The question of playing exhibition games shall be regulated by the respective leagues having membership in

this association; except, however, that exhibition games with any club harboring or playing a disqualified player shall be absolutely prohibited. Any club violating this Article shall be fined by the Board not less than $100, nor more than $250.

Application for Membership.

Article 17. Applications for membership by leagues desiring protection under this Agreement must be made each year to the Secretary of the Board, as provided in Article 6.

Termination of Membership.

Article 18. All rights under this Agreement shall terminate on or before the first day of September unless renewed before September 1st of each year, according to Article 17.

New Leagues.

Article 19. Newly organized leagues may ask for and be admitted to membership at any time, but such membership shall terminate on or before the first day of September following, unless renewed according to Article 18.

Reservations.

Article 20. Sec. 1. On or before the first day of October in each year, the secretaries of leagues, parties hereto entitled to the privilege of reservation, shall transmit to the Secretary of the Board a reserve list of players then under contract with each of its several club members for the current season, and in addition thereto a list of such players reserved in any prior annual reserve list who have refused to contract with such clubs and of all ineligible players. Such players, together with all others thereafter to be regularly contracted
2:36 with by such clubs (namely, whose releases have been secured by purchase or draft under this Agreement for future service), are and shall be ineligible to contract with any other club of any league during the period of time between the termination of their contracts and the beginning of the next season. The Secretary of said Board shall thereupon promulgate such lists, provided that no club shall be permitted to reserve any player while in arrears of salary to him.

Sec. 2. The Secretary shall not promulgate a list of regularly reserved players under contract to any club in excess of the respective number named as the player limit in this section. Should any list of reserved players received by the Secretary from any club member of the National Association contain the names of more than the player limit, the Secretary shall immediately return the list to the club forwarding the same, and instruct said club it shall select the proper number to be reserved, and the Secretary shall not thereafter promulgate any list which contains the names of more than the proper number.

Class AA Leagues shall not have more than thirty players under contract or reservation at any time, which number must be reduced to twenty players within thirty days after the opening of the season to the 25th day of August of each year, and neither of which number of players shall include ineligible or suspended players; provided, further, no club shall carry more than five suspended players on its reserve list.

Player limit as follows:

Class A—Within 20 days after opening of season 26 players, reduced to 14 players to August 25th.

Class B—Within 20 days, after opening of season 24 play-
237 ers, reduced to 13 players to August 25th.

Class C—Within 20 days after opening of season 22 players, reduced to 13 players including manager to August 25th.

Class D—Within 20 days after opening of season 22 players, reduced to 13 players, including manager to August 25th.

It is further provided that on or before the date fixed for the reduction of players in the several leagues to the minimum figures every club in each league must present a revised list of players to the President of its league, which said list must be received in the office of the Secretary of the National Association within five days after the above mentioned date. Any or all players under contract to any National Association Club, whose names are not included in this list shall become free agents forthwith. The Secretary shall immediately promulgate such revised lists in his regular bulletin.

## Release From Reservation.

Article 21. The Board may also release from contract or reservation any player or manager when the club with which he has contracted, or by which he has been reserved, shall be in arrears to him for salary for more than fifteen days after such salary became due, or when the reserving club has failed to tender to any player, except "contract jumpers", on or before the first day of March after such reservation, a formal contract with a salary of at least such an amount per month as the Board may fix as the salary to be paid to such player; or when any such reserving club has transferred its membership after the close of the championship season to a different league, if the Board shall deem that the Player will be pre-
238 judiced by such transfer. The player shall declare his intentions to his club, or execute the club contract on or before March 1.

## Individuals and Organizations in Conflict With The National Association Agreement.

Article 22. Sec. 1. Any club member of any league or association, a party to or identified with the National Association Agreement, that shall enter into any negotiation to become a member of or in any way co-operates with any organization of professional base-

ball clubs whose existence will in any manner conflict with the letter and spirit of this agreement or the interests of any of the clubs operating under it, shall forthwith forfeit all rights and privileges conferred by this Agreement, said forfeiture to include its membership in any association a party to this Agreement, and all rights of reservation to players reserved during the current or any preceding season. The penalty herein imposed shall be positive and final and shall not be revoked unless by the unanimous consent of the Board or upon appeal by a three-fourths vote of the National Association of Professional Baseball Leagues.

Sec. 2. Any officer, manager or player who shall enter into any such negotiations as referred to in Section 1 of Article 22, or who shall agree or contract to play with any club a member of such organization, shall be declared ineligible and subject to all the disabilities referred to in the preceding section.

Sec. 3. Any club member, club official (including club manager), identified with the National Association, or umpire, who shall at any time publicly, or otherwise, make charges reflecting upon the integrity of any club member, club official, club manager or umpire in any of the leagues party hereto, shall be cited for appear-
239 ance before the National Board of Arbitration for trial. Such trial shall be conducted in accordance with the rules of the National Board. Failure to appear, or failure to substantiate such charges, shall subject the author to such penalties as the National Board may inflict. Upon such charges being proven, the accused shall be subject to such penalties as the National Board may inflict.

## Disqualified Players.

Article 23. Sec. 1. Any player who violates his contract and commits the offense known as "Contract Jumping" shall be debarred from filing an application for reinstatement for the period of five years; provided said violation be willful.

Any player disregarding his reservation shall be debarred from filing an application for re-instatement for the period of three years; provided said violation be willful.

Re-instatement may then be granted only on such conditions and penalties as may be prescribed by the National Board of the National Association.

Sec. 2. Any club member, party hereto, that shall fail to report to the Secretary any player of such club who has "jumped" a signed contract, shall be subject to a fine of $25 for each offense.

Sec. 3. When a player or manager under contract or reservation by any club of an association party hereto shall be expelled, suspended or rendered ineligible in accordance with the provisions of this Agreement or the rules of such association, notice of such disqualification shall be given to the Board by the Secretary of the Association from whose club the player may have been thus disqualified, and the Board shall forthwith give notice of such disquali-
240 fication to the several leagues acting under this Agreement. When a player shall become ineligible under the provisions

of this Agreement, or by order of the Board, the Secretary of the Board shall notify the several clubs acting under this Agreement of such disqualification. From the receipt of any such notice all club members of associations acting under this Agreement shall be debarred from employing or playing with or against such disqualified player.

## Suspension of Players.

Article 24. Any player who has entered into a contract with any club of an association party hereto, may be suspended without pay, or fined by such club or association, for breach of contract or breach of any of the rules of such club or association, and he shall thereafter be ineligible to sign or play during the remainder of the current season with any of the clubs of any association acting hereunder, unless such disability shall have been sooner removed by the club or association by which he was suspended, or by the Board.

Any player suspended for a period longer than ten days may appeal his case to the National Board of the National Association.

Article 25. The disbandment of a club or its expulsion from membership in any association acting hereunder shall operate as a release of its players from contract or reservation by said club. But the services of such players shall be subject to the League officials for the purpose of supplying the vacancy in membership, players' salary to continue.

## Control of Discipline.

Article 26. Sec. 1. Each association shall have the right to make and enforce all rules and regulations pertaining to the con-
241 trol, discipline and compensation of all players under contract with its club members. And it may prescribe that all contracts with its players shall be made directly with said association, assignable to its club members, with the right of reservation to be exclusively exercised by said association, in which event all the provisions of this Agreement applying to contracts or reservation of players with and by club members, shall apply to such contracts and reservation of players, with and by said association; provided that such rules and regulations shall in no way conflict with the Provisions of this Agreement, or any rule, regulation or order of the Board.

Sec. 2. Any club member or party to this Agreement, that may lose a player by desertion, except "contract jumpers," shall have the option on his services, and in all cases (except by purchase of release) the player must return to the club he deserted from, and at the same salary he commanded at the time of leaving his club.

Sec. 3. Players are prohibited from joining any other club or clubs for the purpose of participating in championship games, after the close of the season of the league to which they are under reservation, under such penalties as the National Board of Arbitration may inflict. Clubs are also prohibited employing such players in any

championship contest under penalty of forfeiture of games in which such players participate.

Territorial Rights.

Article 27. Sec. 1. Each league whose application for membership under this Agreement has been accepted by the Board shall have exclusive control of its own territory, until the termination of its membership, and no club from any other league, party to this Agreement, or player under control of any National Association
242 club, shall be allowed to play a game or participate in any game in any city of its circuit without the consent of the league representing said city; nor shall any club member of a league party hereto, or National Association player, be allowed to play within five miles of any city in which is located a club member of the National Association of Professional Baseball Leagues without the consent of such league. Any club violating shall be fined $500.00, the same to be paid to the Secretary of the National Association for the benefit of the club whose territorial rights have been violated. Any player violating shall be fined $50.00, the same to be paid to the Secretary of the National Association and converted into the treasury of the National Association.

Sec. 2. The circuits of each league now under the protection of this Agreement, with the exception hereinafter provided for, shall be continued as at present constituted. No circuit shall be changed without the consent of a majority or more of the clubs of such league; nor shall any club transfer or release its players for the purpose of injuring or weakening the league of which it is a member; provided, however, that the circuit of any leagues of the same class may be changed by transferring any club from a city in a league in the same class on consent of the majority of the clubs of such league of that class.

Sec. 3. If a league in any class shall choose a city in which a club of a lower classification is located, such league shall be then required to pay to the league of the class of which such city may be a member, the sum of Twenty-five Hundred Dollars. Provided, further, that when a league in any class shall so change its circuit and
243 choose a city in which a club of a league of a lower classification is located, such club shall be compensated for any assets they may have by the club desiring to locate in such city, and upon failure to agree upon such compensation, the matter shall be determined by arbitration. The Arbitration Committee shall consist of three members, one a member of a club of a league of the class of which the league making such change in its circuit is a member; the second a member of a league of the class whose circuit is thereby changed; provided, however, that no member of either league affected shall be a member of such committee. These two shall select a third member from a league disinterested in the circuit affected thereby.

Sec. 4. But provided, further, that the aforesaid provisos shall not operate against leagues of a lower classification only in the event

of either major league changing its circuit and choosing a city in which a National Association club is located, according to the provisions of Article 5, Section 1, of the National Agreement.

Sec. 5. The notice of selection and drafting of territory under the provisions of Article 27 must be filed with the Secretary of the National Association between October first and December first of each year, and payment therefor must be made within thirty days of date of notice of selection.

## Ineligible Players.

Article 28. No game shall be played between any club of any league acting hereunder, or any of its players under contract or reservation with any club containing an ineligible player; nor with a club that has played with another club either during the championship season or at any other time. A violation of this section shall subject each offender to fine, suspension or other penalty, in
244 the discretion of the Board.

## Transfer of Players.

Article 29. Should a club of any association agree in writing or by telegraph with another club of any association subject to the National Association Agreement, for the release of any player then under contract or reservation with or by it, in accordance with the rules governing, either party may file said Agreement with the Secretary of the Board, and should any club refuse to comply with its said Agreement, the Board may require said Agreement to be complied with and may transfer the said player accordingly.

## Payments of Salaries.

Article 30. Before any league shall be granted the privilege and protection of the Agreement, it shall enact laws or regulations debarring any of its clubs from entering into contract with any player while under arrears of salary to him and from suspending or otherwise attempting to disqualify such player for refusing to contract while it is so in arrears of salary to him and from expulsion of any club for refusal to pay arrears of salary to a player when required by said league or by the Board.

Article 31. No club member of the National Association of Professional Baseball Leagues shall be permitted to participate in any interleague championship series of games excepting under such rules and regulations, and subject to such Board of Control as may be decided upon by the National Board of Arbitration. Any club or clubs disregarding the spirit of this Article shall be subject to such penalties as may be imposed by the National Board of Arbitration.

Forfeiture of Rights.

Article 32. All rights of any league hereunder shall be
245 forfeited for failing to expel any of its club members that may play a game of ball, except under the Playing Rules adopted by the National Association of Professional Baseball Leagues.

Definition of Terms.

Article 33. The term "league or association" as herein used shall mean and comprise an organization of professional baseball clubs of not less than four clubs, representing four cities, whether known as "league or "association", or any other designation.

Article 34. This Agreement may be altered or amended by a three-fourths vote at the annual meeting, or unanimous vote at any time by the National Association of Professional Baseball Leagues. It shall take effect and be in force from and after September 6, 1901.

Classification of Leagues to be Governed by the Aggregate Population of the Cities Represented.

| | | | |
|---|---|---|---|
| Class AA | | | 1,750,000 |
| Class A | | | 1,000,000 |
| Class B | 400,000 | to | 1,000,000 |
| Class C | 200,000 | to | 400,000 |
| Class D | up | to | 200,000 |

Ten Years' Agreement.

Article 35. Resolved, That we hereby agree, jointly and severally, to extend the life of the National Agreement of the National Association of Professional Baseball Leagues adopted at Chicago, September 6, 1901, for the period of ten years (10) from the 6th day of September, 1901.

This Agreement shall be and is binding upon our successor or successors, and upon any and all associations, leagues and clubs hereafter becoming parties of this National Agreement.

246 Re-Enactment of National Association Agreement for Ten Years from September 6, 1911.

Article 25. Resolved, That Article 35 of the National Agreement of the National Association of Professional Baseball Leagues, be and the same is hereby altered and amended to read as follows:

Resolved, That we hereby agree jointly and severally to extend the terms of the National Agreement of the National Association of Professional Baseball Leagues heretofore adopted at Chicago, September 6, 1901, for the period of ten years, which period will expire on the 6th day of September, 1911, for the period of ten years from the

6th day of September, 1911, which extended period will expire on the 6th day of September, 1921.

This agreement shall be and is binding upon our successor, or successors, and upon any and all Associations, Leagues, and Clubs now members of this Association, or hereafter becoming parties to this National Association Agreement Adopted.

National Board of Arbitration.

1917.

Members of the Board.

J. W. Morris, Fort Worth, Texas.
R. H. Baugh, Birmingham, Ala.
T. H. Murnane, Boston, Mass.
R. L. Blewett, Seattle, Wash.
Al. T. Baum, San Francisco, Calif.
T. J. Hickey, Minneapolis, Minn.
E. G. Barrow, New York.
F. C. Zehrung, Lincoln, Neb.
M. E. Justice, Keokuk, Ia.
N. P. Corish, Savannah, Ga.
J. H. Farrell, Chairman and Secretary, Box 634, Auburn, N. Y.

247 Order of Business.

1. Roll call.
2. Reading of Minutes.
3. President's Report.
4. Secretary's Report.
5. Election of Officers.
6. Appointment of Auditing Committee.
7. Unfinished business.
8. Amendments to Constitution.
9. New Business.
10. Miscellaneous Business.
11. Remarks for the Good of the Association.

Rules and Regulations.

The following Rules and Regulations have been adopted by the National Board of Arbitration and are here given in order that they may be understood by all those interested; same being adopted and to remain in force until repealed.

The Chairman and Secretary.

The Chairman and Secretary of the Board shall issue calls for all meetings of the Board and preside at such meetings having all power with reference thereto which are incidental to a presiding officer.

## The Secretary.

The duties of the Secretary of the Board shall be as follows:

(*a*) To receive, receipt for, and disburse all moneys payable to this Board, and also all moneys as per Sec. 10 of Article 4 and to make all financial statements required by the National Association.

(*b*) To keep the records of the proceedings of the Board, together with all records required to be kept by the provisions
248 of the National Association Agreement.

(*c*) To issue all notices required by the National Association Agreement to be issued.

(*d*) To receive all applications for membership under the National Agreement, and to see that the applicants, when admitted pay their proper dues.

(*e*) To attend to such other matters as may be required of him by the National Board, and to keep records of all the business and duties connected with the Board.

## Rules.

Rule 1. In addition to the annual meeting of the National Board the Chairman may at any time, at his own option, or at the request of four members of the Board, call special meetings, the place of meeting and hour to be determined by the Chairman.

Rule 2. Notice of such meeting shall be given to all members of the Board by wire or mail to reach the respective members at least three days prior to such meeting provided, however, that a meeting may be held at any time and place through unanimous consent of all members.

Rule 3. During the interim between the various meetings of the Board the Secretary is clothed with power to decide disputes upon the evidence submitted, provided, however, that any club or player in interest may request action by the full Board at the outset.

Rule 4. All papers, telegrams, affidavits and other evidence in all cases presented to the Board shall be filed with the Secretary. Contracts submitted to be returned to the proper parties in due season.

Rule 5. Whenever a decision is made containing an important ruling or new Procedure, the same shall be reduced to writ-
249 ing by the Secretary, and copies transmitted to the several League members of the National Association through the respective League Presidents.

Rule 6. Whenever any player shall be "selected by draft" by more than one club, the Secretary will award him to the club which shall have first filed formal notice with the Secretary that it desires the services of the player. Such notice, however must be accompanied by the deposit required by the provisions of the Agreement; otherwise, such notice shall be of no effect and void.

Rule 7. Notices of drafts for players received by the Secretary prior to the opening of the respective draft seasons of the several classifications shall be considered as having been received at 9 a. m.

of the morning of the day opening their prospective draft seasons of the several classifications.

A selection made by wire, must be followed within thirty-six hours by the amount due; otherwise the selection is void.

When two or more clubs shall select the same player the award of such player shall be made by drawing by lot from a hat.

Rule 8. Whenever the services of any player released under the provisions of the National Association Agreement are accepted by any club or association authorized to do so by the provisions of the Agreement notice thereof shall be at once sent to the Secretary who shall accordingly promulgate the fact.

Rule 9. The first notice of terms accepted received by wire or otherwise in the Secretary's office (followed by proofs) shall have precedence and shall be binding. Notice of "Terms accepted" must be filed within ten days.

250 Rule 10. Any player selected by draft shall be ineligible to play with any other club, and upon declining to abide by the decision of the Board, may be included in the regular list of reserved players of the clubs selecting him, as per provisions of Article 20 of the National Association Agreement.

Rule 11. The Secretary shall keep a separate account of all amounts received by him for drafted players, showing by whom drafted, amount paid, and time of payment.

Rule 12. Supplemental to the Reserve list of October 1, as required by Article 20, the Secretary shall about October 27, of each year prepare and issue a revised Reserve list, containing om*m*issions, alterations and corrections. Additional reservations will not be received after issue of Final Reserve List, and any player whose name fails to appear upon said revised Reserve List shall be free to negotiate his services, upon application to the Board.

Rule 13. No release by purchase of players made during the respective season for the different classifications shall be considered as against the draft of such player.

Rule 14. All matters and writings involving National Association Clubs and Major League Clubs shall pass through the Secretary's office and be made a matter of record in said office.

Rule 15. Upon the presentation of satisfactory evidence to this Board that any club in any league under this agreement (either through its officers, managers or players) has tampered with a player under contract or reservation to any other club under this Agreement, said offending club shall be fined the sum of Two Hundred Dollars.

Rule 16. Any player under contract or reservation to any
251 club who shall fail to report within three days at the point he shall be ordered to report, may be fined One Hundred Dollars, provided that the club shall give the player at least one week's notice of the time he is to report.

Rule 17. All contracts must be made a matter of record in the Secretary's office, under such penalties as the National Association Agreement provides.

Rule 18. All National Association clubs shall be required to file

with the Secretary copies of agreements entered into relating to the release by purchase of players by one National Association Club to another. Releases containing options must read that the option shall be exercised on or before August 15 of each year, in order to comply with the drafting rules.

Copies of agreement between National Association Clubs and Major League Clubs should also be filed in the Secretary's office as a matter of record.

Rule 19. Non-Reserve clause contracts are abolished and no such Non-Reserve contracts shall be promulgated, excepting by permission of the National Board of Arbitration of the National Association.

Rule 20. All club members must use the official form of sales agreements and optional agreements furnished through the Secretary's office. All other forms are illegal. The penalty for violation shall be a fine by National Board against the offending parties, or an order or notice declaring the player involved to be a free agent.

Rule 21. No sale of a Minor League player by one Minor League Club to another shall be permitted after August 26 of each year.

Rule 22. Any application for a re-hearing must be filed in
252 writing with the Secretary of the Board, by parties interested, within ten days after such decision has been made. In no case shall a matter be re-opened unless the application has been filed within said ten days. The applicant shall state in concise form the reason for the request, together with any new evidence in the case.

Rule 23. Failure to forward contracts of players selected by draft to the Secretary's office within fifteen days after notice of selection will subject such club to a fine of Twenty-five Dollars.

Rule 24. Failure to file with the Secretary of the National Association the contract of any player within thirty days after the time such player joins said club shall subject the club to a fine of Twenty-five Dollars for each and every offense.

Rule 25. After the close of a championship season in a League, players are prohibited from joining other clubs for the purpose of participating in championship games in another league.

Rule 26. All Inter-League championship series of games between National Association Clubs shall be conducted by Board of Control to be appointed by the National Board of Arbitration and the participants shall be subject to such rules and regulations as the Board of Control may adopt.

Rule 27. Any player released by any National Association Club within a period of thirty (30) days, prior to the close of the playing season, shall immediately become a free agent and can sign with any National Association Club, except the releasing club.

Rule 28. Clubs accepting players on Optional Agreements must give to clubs holding title two days' notice of release. Failing
253 to hear from original club, players may be released outright.

Rule 29. When a player is reported for suspension the reason must be given. If reason is not given, players' salary continues and suspension shall be considered as not in force.

Rule 30. In event of failure of club to notify player of his re-

lease who has not reported within five days after salary becomes due on first and fifteenth of month, the player shall become a free agent and salary due becomes a claim against the club.

Rule 31. Membership shall not be granted to any league that has less than $500 per month salary roll for each club and in no event shall membership be granted to any league that pays its player a percentage of the receipts in lieu of salary.

Rule 32. No club shall be permitted to retain control of players under optional agreements as follows: Class AA no more than eight; Class A seven; Class B five; Class C four.

Rule 33. A club releasing the services of a player on an optional agreement to any club member of the National Association whose championship season commences after that of the releasing club, must pay said player's salary for his cancelled contract for the period of time covering the difference in opening of championship seasons, provided player promptly reports to club to which his services are transferred.

Rule 34. The unconditional release of any player in Class AA or Class A may be recalled at any time within the five days after notice has been given. If the player signs a contract with another club during the five day period the releasing club shall be relieved
254 from payment of salary for any part of the five days the player draws salary under the new contract.

(Signed) J. H. FARRELL,
*Secretary.*

255 PLAINTIFF'S EXHIBIT No. 10.

*Important Notice to Players and Club Presidents.*

"Every player before signing a Minor League contract should carefully scrutinize the same to ascertain whether all of the conditions agreed upon between the Player and the Club President, or its authorized Agent, have been incorporated therein, and if any have been omitted the player should insist upon having all the terms, conditions, promises and agreements inserted in the contract before he signs the same. If at any time, as the result of an Official investigation, it is ascertained that an agreement of any kind between a Minor League Club President and a player is not fully set forth in the player's regular contract or made a part hereof, then a penalty shall be inflicted against the Club and Manager violating this provision according to classification, the same to be paid into the treasury of the League of which the contracting club is a member, and the said contract shall be null and void and the player unconditionally released."

Class AA.

*Contract.*

Approved by the National Association of Professional Base Ball Leagues.

—— League of Base Ball Clubs, —.

This agreement, made this — day of —— 191– between —— —— party of the first part, and —— —— party of the second part, witnesseth:

First. Said party of the second part agrees to devote his entire time and services, as a ball player, to said party of the first part during the period of this contract.

256 Second. Said party of the second part agrees to conform to all the rules and regulations now adopted, or which may be hereafter adopted by the party of the first part, appertaining to his services aforesaid.

Third. The player further agrees that during the term of this contract he will not, except with the written consent of the President of the Club and the President of the League, either during the playing season or at any other time, engage in any exhibition game of Base Ball, except as herein provided, and further agrees not to use the Club uniform at any time or for any other purpose, and at the expiration of the playing season to return said uniform to said Club-owner.

Fourth. It is further understood and agreed between both parties to this contract, that all the provisions and conditions of the National Agreement of the National Association of Professional Base Ball League be and they hereby are made a part of this contract.

In consideration of the foregoing premises the party of the first part agrees:

First. To pay to the said party of the second part the sum of $—— per month, to be paid in equal semi-monthly installments, upon the first and fifteenth of every month during the championship season of the league of which first party is a member, unless the ball team shall be away from home playing games, in which even the installments falling due shall be paid the first week after the return home of the said ball team.

Second. Said party of the first part agrees to pay the traveling expenses, board and lodging of said party of the second part,

257 whenever said party of the second part may be traveling in the services of said party of the first part, and when not so traveling the party of the second part will pay all of his own expenses.

Third. It is further stipulated and agreed between both parties to this contract that should the party of the second part sustain an injury on the playing field, while actually engaged in the playing of a game of Base Ball while in the service of the party of the first

part, that immediately, continuously and wholly prevents him from service, the party of the second part shall be entitled to, as hereinafter set forth, and shall receive during the period of such continuous total disability, the sum of his salary in full for the first two weeks—further provided: that the party of the first part reserves the privilege, or option, of terminating this contract *as* the expiration of said two weeks without further liability.

Fourth. The compensation of the party of the second part stipulated in this contract shall be apportioned as follows: 75% thereof for services rendered, and 25% thereof for and in consideration of the player's covenant to sanction and abide by his reservation by the party of the first part for the season 191–, unless released before its termination in accordance with the provisions of this contract. The party of the second part shall be entitled to and shall be paid the full consideration named herein in regular *semi*-monthly installments, unless released prior to the termination of this contract, regardless of whether or not the contracting Club exercises the privilege of reserving the party of the second part for the season of 191–.

It is hereby mutually agreed by the parties hereto, in con-
258 sideration of the premises hereinbefore set forth, that should the party of the said second part, at any time or times, or in any manner fail to comply with the covenants and agreements contained, or any of them, or with any of the rules and regulations of the party of the first part, which are now or may hereafter from time to time be made, or should the said party of the second part at any time or times be intemperate, immoral, careless, indifferent, or conduct himself in such a manner whether on or off the field, as to endanger or prejudice the interests of said party of the first part, or should the party of the second part become ill or otherwise unfit, from any cause whatever, excepting injury in actual service, or prove incompetent in the judgment of the party of the first part, then the said party of the first part hereunto shall have the right to discipline, suspend, fine or discharge the said party of the second part in such manner as to it, the said party of the first part, shall seem fit and proper, and the said party of the first part shall be the sole judge as to the sufficiency of the reason for such discipline, suspension, fine or discharge, and in case of a fine imposed, it is agreed by said party of the second part that he will pay the same, or that the same may be withheld, as and for liquidated damages.

Fifth. The player agrees to abide by the reservation clause in this contract in the event that the Club, or the League of which the Club is a part, is forced to suspend operations on account of war conditions. This clause *if* void unless the Club and League plays at least one-half of its originally adopted schedule playing season.

This clause is binding only during the period of the war.
259 No non-reserve contract shall be entered into by any club member of the National Association until permission to do so has first been obtained from the National Board of the National Association.

Failure of a reserved player who has been tendered a contract on

March 1st, to return said contract to the reserving Club on or before March 20th, may be reported for indefinite suspension, and same promulgated.

In order to enable the party of the second part to fit himself for the duties necessary under the terms of this contract, the said party of the first part may require the said party of the second part to report for practice and participate in such exhibition contests as may be arranged by said party of the said first part, for a period of — days prior to the — day of ——, the party of the first part to pay the actual expenses of said party of the second part during said period.

It is further agreed that if the said party of the first part should desire the services of the said party of the second part, for any period of time after the date mentioned for the expiration of the term mentioned herein, or which may be mentioned in any renewal hereof, said first party shall have the right to the same by paying compensation to the said second party for each day, at the rate of one-thirtieth (1-30) of the amount herein specified, as the monthly salary of said second party.

In witness whereof, the said party of the first part has caused these presents to be signed by its officer thereunto duly authorized, and the said second party has affixed his hand and seal on the day and year first above written.

By —— ——
*President.*

260 —— —— [SEAL.]

(Player sign here.)

—— ——

(Player's Home Address.)

—— ——

*Salary Limit Affidavit.*

STATE OF ——,
*County of* ——:

—— ——, a Ball Player, being duly sworn, deposes and says that the full and entire amount of compensation or remuneration, including salary, gift, or anything else by whatever name, that he receives directly or indirectly from said Base Ball Club, does not exceed $— per month, the amount shown on the face of this contract.

—— ——

(Player sign here.)

Subscribed and sworn to before me this — day of ——, 19—.

—— ——,
—— ——.

STATE OF ——,
*County of* ——:

—— ——, the undersigned Club President makes oath that he will not, nor will his Association, Corporation, Agent, or Servant, compensate or pay said Base Ball Player for any other services rendered to the said Base Ball Club, or to any other person, or persons, firm or corporation, more than the sum of $— per
261 month, for a term of not more than the regularly scheduled championship season of this league.

—— ——.

Subscribed and sworn to before me, this — day of —— 19—.

—— ——.

262 Referring to the copy of the form of contract used by the Class AA leagues, the witness on cross-examination was asked if there was anything to indicate the date of its promulgation, to which he replied that there was not the slightest thing except the form at the top, which he thought was a part of the Players' Fraternity Agreement, which would indicate that it was subsequent to 1914.

Thereupon there was offered in evidence by plaintiff's counsel a copy of the franchise issued to the Baltimore Federal League Club by the Federal League of Professional Base Ball Clubs, dated February 28, 1914, which is in the words and figures following:

The Federal League of Professional Base Ball Clubs.

Incorporated under the Laws of the State of Indiana.

*Franchise.*

This indenture witnesseth: That the Federal League of Professional Baseball Clubs, a corporation organized, existing and doing business as such under and by virtue of the laws of the State of Indiana, by and upon the authority of its Board of Managers, does hereby, subject to the terms and conditions hereinafter imposed, authorize, empower and license Federal Base Ball Club of Baltimore, Inc., of the City of Baltimore, State of Maryland, to maintain and operate a Professional Base Ball Club and Team in the City of Baltimore, State of Maryland, and to play the schedules of championship games adopted by this association with the various other Teams and Clubs now or hereafter licensed by this Associa-
263 tion, for the playing seasons during the term of the corporate existence of this Association, or any extension or renewal thereof provided the license shall remain in good standing within the meaning of this Franchise and the Charter, By-laws, Rules and Regulations of this Association, as the same are now in force or may be

hereafter amended or adopted, and as the same are applicable in general to all franchise holders of this Association.

In consideration hereof, the grantee or licensee herein by the acceptance of this franchise, is hereby bound to abide by and conform, in all respects, with the provisions of this Franchise, the Charter, By-Laws, Rules and Regulations of this Association, and to pay and discharge such obligations as may be imposed by such By-Laws, Rules and Regulations of this Association, which provisions and obligations, the licensee herein expressly agrees to perform and shall be deemed conditions to the right and license herein granted to such licensee.

The further conditions hereof are:

First. The licensee herein shall play the scheduled games on its part to be played, and adopted by this Association each season.

Second. The licensee shall pay and discharge to this association and each club member thereof, all obligations due and owing by reason of any contract, or by reason of any finding against said licensee by the Board of Arbitrators, hereinafter referred to, or by reason of the Charter, By-Laws, Rules and Regulations of this
264 Association. The licensee shall pay and discharge all valid claims against it for operating its ball club and park, including all salaries due its players and others. The licensee shall have no right or license to sell its contracts or any of them, with players to any rival club, organization, or person, without the written consent of the Board of Managers of this Association, nor shall it sell, transfer, mortgage or otherwise dispose of its lease upon its ball grounds or the real estate owned by it and operated as such ball grounds, except as herein expressly provided, without the written consent of said Board of Managers of this Association.

Third. The licensee shall deposit with this Association contemporaneous herewith its stock in this Association duly assigned in bank, and shall make such deposits in money or furnish such bond or bonds as may be required from time to time, by the Board of Managers, as shall be required of all other franchise holders. Said licensee shall at all times deposit with the President of the Association a duplicate signed copy of all players' contracts, within ten (10) days after the same are executed, and shall deliver an assignment of the lease upon the base ball park or grounds in which it proposes to play ball; or in the event that the licensee herein shall own said park; then, and in that event, it hereby grants and gives unto this Association the sole and exclusive right in the event of default on the *park* of the licensee herein, as hereinafter provided, to a lease upon its base ball grounds, or so much as may be necessary,
265 upon such terms and conditions as may be mutually agreed and in the event of a failure of the parties to agree upon said terms and conditons, then each shall select an arbitrator to settle said terms and conditions, and upon the inability of said arbitrators to agree they shall be authorized to select a third arbitrator, and a majority vote of said arbitrators shall determine the terms and conditions of said lease. And in the event of default, failure, refusal or neglect of the licensee herein to comply with the terms and con-

ditions of this Franchise Contract or the Charter, By-Laws, Rules and Regulations of this Association as herein provided, then and in that event, at the option of this Association, and upon the majority vote of the Board of Managers, the stock of this Association so deposited and the sum of money so deposited as aforesaid, the lease so assigned and deposited with this Association and the said contracts with players, shall be and become the absolute property of this Association as and for its liquidated damages for such default on the part of the licensee.

The said Association shall have the immediate and exclusive right, by and through its president or other officer, upon the default, failure, refusal, or neglect of the licensee aforesaid, pending the action of the Board of Managers of said Association, as well as in compliance with such action of said Board, to take possession of the baseball park herein referred to, and either in its own name or in the name of the licensee continue to play the schedule of games of base ball, or to license others so to do, with the players under contract with the licensee or other players, and to otherwise protect the Associa-
266 tion as its interests may appear.

Fourth. The holder of this Franchise agrees that all matters of dispute or controversy in reference to the rights and liabilities of the licensee herein with any other members of said League, or any dispute growing out of the interpretations of the By-Laws, Rules and Regulations of this Association, or any matter of dispute of any nature whatsoever, concerning the players, shall be settled conclusively between the parties by arbitration, and not otherwise; and it is agreed that the Board of Managers of this Association at the time of said dispute shall be and constitute a Board of Arbitrators, whose decision shall be final between the parties; and the licensee herein binds itself to abide by any such decision of said Board of Arbitrators.

In witness whereof, the said The Federal League of Professional Base Ball Clubs has, by order of its Board of Managers, caused its corporate name to be hereunto subscribed by its President attested by its Secretary, and its corporate seal to be hereunto affixed by its Secretary this 28th day of Feb'y, 1914.

THE FEDERAL LEAGUE OF PROFESSIONAL BASE BALL CLUBS.
By JAS. A. GILMORE,
[SEAL.] *President.*

Attest:
FLOYD H. RICHARD,
*Secretary.*

The witness Goldman further testified that the franchise of February 28, 1914, was the original franchise issued to the Federal Baseball Club of Baltimore by the Federal League, but subsequently there was a new charter adopted by the Federal League about
267 August, 1915, which is the one which is in effect.

Thereupon the plaintiff offered in evidence franchise issued by the Federal League of Professional Base Ball Clubs to the

Baltimore Federal League Club, dated July 7, 1915, and accepted by the Baltimore Federal League Club on August 27, 1915, which is in the words and figures following:

This indenture witnesseth:

The Federal League of Professional Baseball Clubs, hereinafter termed "League", a corporation organized and existing under the laws of the State of Indiana, does hereby authorize and license The Federal Base Ball Club of Baltimore, Inc., of the City of Baltimore, State of Maryland, hereinafter termed "Licensee", to maintain and operate a professional baseball club in said City of Baltimore, State of Maryland, for the playing of baseball during the term of the League's charter, subject to and conditioned, however, upon the faithful performance by the Licensee of the following terms and conditions, to-wit:

First. The Licensee shall employ and maintain under contract during the playing season sufficient players, not less than sixteen in number, skilled in the art of playing baseball.

Second. The Licensee shall play the schedule of baseball games adopted annually by the League for the playing seasons for the teams, or ball clubs, now or hereafter licensed by the League, and shall play the games so scheduled with the constituent members according to such schedule, unless the failure of the Licensee to present its baseball team at the time and place scheduled shall
268 have been caused by unavoidable accident in traveling.

The Licensee agrees that it will not allow or permit open betting or pool selling upon its grounds, or in any building owned or occupied by it.

The Licensee agrees that it will not offer, agree, conspire or attempt to lose any game of ball, and agrees immediately to expel any player who shall be found guilty of offering, agreeing, conspiring or attempting to lose any game of ball.

Third. (*a*) The Licensee shall promptly remit to and pay to the League, within two days after the close of any series of games with a constituent member of the League, the share of receipts from said games, payable to the League under the license contract, and the rules and regulations of the League. (*b*) The Licensee shall, immediately upon the conclusion of any series of games with a constituent member of the League, pay to said constituent member its share of the receipts from said games. (*c*) The Licensee shall pay to the League, within ten days after written demand therefor, the Licensee's pro-rata share of any assessment levied equally upon the members of the League, pursuant to the By-laws, Rules and Regulations of the League, when required for the payment of the salaries of officers and umpires of the League and other ordinary expenses incurred and to be incurred by the League in the management of its affairs. (*d*) The Licensee shall pay, within five days of the date of imposition thereof, any fines imposed upon it pursuant to the Rules and Regulations of the League for violation of any Rule or Regulation thereof.

269 Fourth. The Licensee shall promptly pay and discharge all debts and obligations due and owing by it, including all

valid claims against the Licensee for operating its ball club and park, and all salaries due its players and others.

Fifth. The Licensee shall always keep and maintain under lease or ownership a ball park and improvements suitable for the playing of the games of baseball scheduled by the League and shall have said baseball park and improvements under lease or ownership on or before the first day of November of each year for an unexpired term of not less than one year thereafter.

The Licensee shall, simultaneously with the execution of this contract, make proper and legal assignment to the League of its lease to the ball park and grounds for the full term thereof; such assignment to take effect, however, and to become absolute only upon forfeiture of this license by the Licensee, as herein stipulated. In the event that the Licensee shall own the ball park and appurtenances thereto, it shall simultaneously with the execution of this contract, enter into a written agreement with the League, under which the League or its assigns shall, in the event of the forfeiture of this license, have the use and enjoyment, at its option, for a term of three years from the date of such forfeiture, of said ball park, grounds and improvements thereon, upon the usual covenants, the rental to be paid to be agreed upon between the League and the Licensee. In the event of a failure of the League and the Licensee to agree upon the rent to
270 be paid, then each shall select an arbitrator to fix said rental, the said two arbitrators to select a third arbitrator, and the majority vote of said arbitrators to be binding upon the League and said Licensee.

The said Licensee agrees that it will not assign or transfer the said lease to any third party without the consent of the League first having been had, and that upon the execution or renewal of any such lease thereafter, it will promptly assign the same to the League for the purposes and as hereinbefore stipulated.

Sixth. At the time of the execution of this contract, the Licensee agrees to, and does hereby, deliver to and deposit with the League duly executed original copies of its contracts with all its players, and agrees that it will deliver to and deposit with the League, within ten days of their respective execution, duly executed original copies of all contracts thereafter made with its players; it being understood and agreed that the Licensee in making such contracts shall use the uniform contract which at the time has been approved by and is in use by the League.

It is understood and agreed that the said delivery and deposit of said players' contracts by the Licensee to the League constitutes a full, complete and executed assignment by the Licensee of all of its right to and interest in said contracts, and each of them, in the event of a forfeiture of the within license.

The Licensee agrees that it will not sell or assign its contracts, or any of them, with its players to a club, organization, persons or person, member of, or affiliated with, any other League, without the

written consent first having been had of the Board of Man-
271 agers of this League.

The Licensee herewith endorses over, assigns and delivers to the League its certificate for the shares of stock owned by it in the League, with full authority in the League, in the event of a forfeiture of the within license, to hold said certificate of stock as the absolute property of the League. The Licensee, while in good standing, has the right to sell and assign said shares of stock in the League, and the within License, provided, however, that the name of the proposed vendee shall be first submitted to the League and have the approval of the majority of the Board of Managers thereof.

Seventh. In the event of the default, failure or refusal or neglect of the Licensee to keep and perform the conditions and obligations herein by the Licensee assumed, and each of them, the League shall serve written notice upon the Licensee of such default, failure, refusal or neglect, specifying same.

In the event that the Licensee, for a period of twenty days after the service of said written notice, shall fail to rectify or make good such default, failure, refusal or neglect, then and in that event the League, at its option, may, upon the affirmative vote of a majority of the whole Board of Managers, forfeit this franchise and license, and shall thereupon become the absolute owner of the said shares of stock of the Licensee so deposited, the lease of said ball park and grounds, and the said contracts of the Licensee with its players so assigned, it being understood and agreed between the parties
272 hereto that the same shall be received and accepted by the league as and for its liquidated damages for such default on the part of the Licensee.

The League shall have the immediate and exclusive right, by and through its President or other officer, upon the default, failure, refusal or neglect of the Licensee aforesaid, pending the action of the Board of Managers of the League, as well as in compliance with such action of said Board, to take possession of the ball park herein referred to and its improvements, and either in its own name or in the name of the Licensee continue to play the schedule of games of base ball, or to license others so to do with the players under contract with the Licensee, or with other players, and to otherwise protect the League as its interests may appear.

In the event that the Licensee desires to contest the ground of default, failure, refusal or neglect specified in said notice, then it shall, within five days after the service of said notice, notify the President of the League by telegram or letter of its desire to be heard by the Board of Managers thereon, whereupon the League, prior to any decision or declaration of forfeiture by said Board, shall fix a time and place where the Licensee may be heard, and an inquiry be had before the Board of Managers respecting said matter, and shall serve written notice thereof on said Licensee not less than five days prior to the date fixed for said hearing. The Board of
273 Managers shall thereupon proceed at said time and place and under such regulations as it may prescribe to hear said matter,

and the finding thereon by a majority vote of the whole Board of Managers shall be final and conclusive on the Licensee and the League.

The Board of Managers in fixing the time for said hearing shall select a date within the said period of twenty days, but not less than five days subsequent to the service of the notice last provided for to be served on the Licensee; provided further that by mutual consent of both the Licensee and the League and without prejudice to the rights of either the date for said hearing may be fixed subsequent to said period of twenty days.

Eighth. The Licensee agrees that all matters in dispute or controversy with any other Licensee in reference to the rights and liabilities of the Licensee with or against any other Licensee, shall be settled conclusively between the parties by arbitration and not otherwise; and it is agreed that the Board of Managers of the League, exclusive of those members involved in the controversy, shall constitute a Board of Arbitrators, whose decision shall be final between the parties; and the Licensee herein binds itself to abide by any such decision of said Board of Arbitrators.

Ninth. In consideration of the covenants of the Licensee, as aforesaid, the League agrees to operate and conduct competitive baseball games among the constituent members of the League, to fix by rules and regulations the conduct thereof, to employ, transport and
274 pay competent and impartial umpires therefor, to arrange a schedule of games annually and promulgate the same to the constituent members; to receive and collect from each constituent member of the League a uniform percentage out of the receipts of each member, and to impartially enforce the rules and regulations of the League.

The League, at its offices, and through its officials, shall furnish the Licensee, upon request at any time, full information regarding the affairs of the League, including correct statements respecting the League's financial condition and the expenses of operation.

In witness whereof, the said Federal League of Professional Baseball Clubs has, by order of the Board of Managers, caused its corporate name to be hereunto subscribed by its President, attested by its Secretary, and its corporate seal to be hereunto affixed by its Secretary, this 7th day of July, 1915.

THE FEDERAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS.

(Sgd.) By JAS. A. GILMORE,
[SEAL.] *President.*

Attest:
(Sgd.) THOS. W. GILMORE,
*Secretary.*

The within Contract is hereby accepted by The Federal Base Ball Club of Baltimore, Inc., Licensee named herein, which hereby
275 agrees to be bound by all terms and conditions thereof.

In witness whereof, said Licensee has caused these presents

to be executed at the City of Baltimore, on the 27th day of August, 1915, by its President and Secretary and attested by its corporate seal, thereunto duly authorized.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INC.,

(Sgd.) By CARROLL W. RASIN,
[SEAL.] *President.*

(Sgd.) J. FRED. SHERIDAN,
*Ass't Secretary.*

The plaintiff further offered in evidence copy of the by-laws of The Federal League of Professional Base Ball Clubs which is in the words and figures following:

*By-Laws of The Federal League of Professional Base Ball Clubs.*

Article I.

Stockholders' and Board of Managers' Meetings.

1. The annual meeting of the stockholders of this association for the transaction of such other business as may come before the meeting shall be held at the offices of the association, in the City of Indianapolis, State of Indiana, on the first Tuesday of December in each year, beginning with the year 1913. A written notice of such meeting signed by the Secretary shall be mailed at least five (5) days prior to the date thereof, to each stockholder appearing
276 as such on the stock records of the association.

If for any reason the annual meeting be not held at the time aforesaid, the Board of Managers shall thereupon immediately fix another date for such meeting and the Secretary shall send out notices for the same as above provided, specifying that such later meeting shall be the annual meeting of the association.

2. Special meetings of the stockholders may be called by the President, or by the Board of Managers, and it shall be the duty of the President to call such meetings whenever requested by the holders of one-third of the outstanding stock of the association. A notice thereof shall be given by the Secretary by mail in all respects as provided for in the case of annual meetings and such notice shall state in general terms time, place and object of such meeting.

3. Any meeting at which all the stockholders are present, in person or by proxy, shall be a valid meeting whether such notices have been sent out or not. Any notice of any regular or special meeting either of stockholders or of Board of Managers, may be omitted if a written waiver thereof shall be signed by all such stockholders or Board of Managers as the case may be.

All proxies must be filed with the secretary.

4. At all stockholders' meetings a majority of all the capital stock outstanding of said association shall constitute a quorum, and when such meeting has been organized a majority of such capital stock

present shall determine all questions which may come before
277 such meeting, except where otherwise provided by the statutes of the State of Indiana.

5. At any meeting of the Board of Managers or of the stockholders, whether the same be a regular meeting or a special meeting, at which a quorum for the transaction of business does not attend, those attending may adjourn the meeting from time to time until a quorum does attend.

## Article II.

### Stock Certificates, Stock Record, and the Sale and Transfer of Shares.

1. Each holder of stock shall be entitled to a certificate under the seal of the corporation, signed by the president or vice-president and the treasurer, stating the amount of the capital stock of the association, the number of shares to which said holder is entitled, issued by this association to operate a base ball club and team in the Federal League shall on or before the first day of January of each year, commencing with the year 1914, select and appoint one manager and to certify such selection and appointment to this association on or before the first day of January of each year.

In the event of a failure, refusal or neglect of any persons or corporation holding a franchise of said association to so select or appoint a member of the Board of Managers as herein provided or in event
the manager thus selected by the various franchise holders do
278 not aggregate the total number of eight provided for herein and in the Articles of Association, then the stockholders of this association shall by ballot at the regular annual meeting of the stockholders elect such manager or managers as will complete the required number of managers constituting or to constitute said Board of Managers. The said Board of Managers shall meet each year immediately after the annual meeting of the stockholders at the place where such stockholders' meeting is held, for the purpose of organization and election of officers and the consideration of any business that may be brought before the meeting. No notice shall be necessary for the holding of this regular meeting of said board, but for any special meeting of the Board of Managers which may be called by the President or which shall be called by him upon the written request of four (4) members of the Board of Managers, written notice specifying the time, place, and general purpose thereof shall be sent by the Secretary to the business address of each member of the Board of Managers by depositing the same in the United States mail forty-eight (48) hours prior thereto. Any meeting at which all of the members of the Board of Managers are present shall be a valid meeting whether notice of the same has been given or not.

2. Whenever any vacancy shall occur in the Board of Managers by death, resignation or otherwise, the same shall be filled without undue delay in the following manner:

The franchise owner or holder appointing such manager
279 whose office is thus rendered vacant shall have the privilege and right for a period of ten (10) days thereafter to appoint

his successor; otherwise and in all other cases of resignation the successor shall be selected by the remaining members of the Board of Managers.

3. A majority of the members of the Board of Managers shall constitute a quorum for the transaction of business at all meetings of the Board.

4. The Board of Managers shall have power to fix the salaries of all officers and to employ and discharge all employees and appointive officers, and fix the wages or salaries thereof; or said Board may authorize any one or more of its officers so to do. The Board may by resolution from time to time prescribe the manner in which all obligations of the association shall be issued and signed by the treasurer and countersigned by the President or Vice President, and all notes, bills of exchange, bonds, mortgages, contracts, and other obligations shall be signed by the President or Vice-President and attested by the Secretary. In like manner said Board may prescribe the manner in which the books of the association shall be kept and audited, and the affairs of the association managed; what officer or officers shall borrow money in the name of the association; and in general said Board shall have full charge and management of the business affairs of said association, with full power to act, and full power by resolution from time to time to delegate such authority and management to any certain officer or officers.

280 5. The Board of Managers shall have full power to make, execute and issue mortgages, bonds, and deeds of trust, and any form of negotiable or transferable notes, bonds and other instruments and securities secured by mortgages, deed of trust or otherwise, either for the purpose of borrowing money or acquiring property for any corporate purpose, and to do every other act and thing necessary to effectuate the same.

6. The Board of Managers shall have power to make and adopt a set of rules and regulations governing the management of this association and fixing the method of conducting the business thereof including such rules and regulations as may be necessary in the proper and efficient management of the League and the members thereof holding franchises to operate base ball clubs or teams in said League. But said Board of Managers shall not have power to pass any rule or regulation inconsistent with the terms and conditions of the charter of this association or these by-laws and to, at any time, amend, modify, or rescind any of such rules and regulations.

## Article IV.

### Officers of the Company.

1. The Board of Managers shall meet annually as hereinbefore provided, and after organizing, elect by ballot the officers of the company, and a majority vote of the whole number of managers shall be required for the election of such officers. The officers of the association shall be a president, vice-president, secretary and treas-

281 urer, all of whom shall hold office for a period of one year or until their successors are elected and qualified. Any two or

more of such officers may be filled by one person at the discretion of the Board. Such officers so selected may or may not be stockholders in this association.

2. Whenever any vacancy shall occur in any office by death, resignation or otherwise, the Board of Managers shall forthwith elect a successor who shall hold office during the unexpired term of his predecessor, or until his successor is elected and qualified.

## Article V.

## The President.

The President shall preside at all meetings of stockholders and board of managers, discharge all the duties which usually devolve upon a presiding officer, sign all certificates of stock issued by said association to stockholders, and perform such other duties as the Board of Managers may from time to time prescribe or which may be required of him by the rules and regulations adopted by the Board of Managers of this association.

## Article VI.

## The Vice-President.

The Vice-President shall perform all duties encumbent upon the president, during the absence or disability of the President; and shall perform such other duties as the Board of Managers may from time to time prescribe.

## Article VII.

## The Secretary.

The Secretary shall attend all meetings of the stockholders
282 and Board of Managers and shall keep or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings. He shall attend to the giving and serving of all notices of the association and shall in general do and perform all the duties pertaining to his office. He shall perform such other duties as the by-laws may require or as may be imposed by law, or as the Board of Managers may from time to time prescribe or as may be required by the rules and regulations adopted by the Board of Managers.

## Article VIII.

## The Treasurer.

The Treasurer shall see that proper books of account are kept showing accurately at all times the financial condition of the association. He shall be the legal custodian of all the money, notes, securities and other valuables which may from time to time come into

the possession of the association. He shall immediately deposit all funds of the association coming into his hands in some reliable bank or other depository to be designated by the Board of Managers and shall keep his bank account in the name of the association. He shall furnish at each regular meeting of the Board of Managers a statement of the financial condition of the association and furnish to each member of the association a verified monthly report of the receipts and disbursements of this association and furnish a certificate of the bank showing the exact balance of money on hand, shall sign all certificates of stock issued by the company, and shall
283 perform such other duties as the Board of Managers may from time to time prescribe or as may be required of him by the rules and regulations adopted by the Board of Managers.

The Treasurer shall furnish and provide bond with a reliable surety company as surety in the penalty and upon the conditions as shall be fixed by the Board of Managers.

Article IX.

Dividends.

Dividends payable out of the net profits of said association may be declared by the Board of Managers from time to time in such amounts and at such times as the Board of Managers in their judgment deem best.

Article X.

Amendments.

These by-laws may be altered, amended or repealed at any regular meeting of the stockholders of the association or at any special meetings of the stockholders called for the purpose.

Witness further testified that he has no personal knowledge of the transaction under which some of the Federal League clubs entered into contract with organized baseball—that he had no knowledge of what preceded the making of that agreement or the negotiations that led up to it. Knows a great many details from hearsay. Was not a party to the negotiations. No one of the Baltimore organization would know the negotiations which led up to the con-
284 tract. The contract which witness refers to is that of December 13, 1915, and is not the peace agreement of December 22, 1915. Rasin was president of the Baltimore club from December 13, 1915, to December 22, 1915, and Richie & Janney and witness were attorneys for the club during that period. Colonel Stuart S. Janney was also stockholder and director. Witness subsequently familiarized himself with the provisions of the peace agreement.

Defendants' counsel read paragraph 7 of the peace agreement of December 22, 1915, which provides for a committee to determine Baltimore's interests, and asked whether proceedings were taken

under that provision to reach a determination of the rights and interests of Baltimore. Witness stated that he knew Janney went to Cincinnati sometime in January, 1916, and absolutely refused to allow that committee in any manner to determine the rights of Baltimore; that nothing was done under the provisions of the 7th article.

The witness further testified that the Federal League had a contract with the Victor Company for supplying base balls similar to that of the National and American Leagues; that this contract was an arrangement with the central organization, and he has not a copy of it; and witness does not know its terms, except that of course it is fundamental in baseball that there must be a uniform ball of the same size and weight, the same resiliency, that they shall keep their shape and be well made; that they had a standard ball for the
285 Federal League and it was furnished under the contract referred to with the Victor Company.

On re-direct examination the witness testified that the reason Colonel Janney was not present at the trial was that he was in the army in France.

Thereupon after notice, the defendants produced agreement, dated December 13, 1915, which was offered and received in evidence, and reads as follows:

*Memo. of Agreement Dec.* 13th, 1915.

At a casual meeting held this day between Messrs. Aug. Herrman Barney Dreyfuss, S. P. Britton, Chas. H. Ebbets, James E. Gaffney, W. F. Baker, H. N. Hempstead and Chas. N. Thomas—representing the National League of Pro. B. B. Clubs and H. F. Sinclair and J. A. Gilmore—representing the Federal League—it was understood and agreed—

1st. That the National League representatives on their part agree if Mr. Sinclair or his representatives or assigns purchase the Chicago National League Club, The National League of Professional Base Ball Clubs—will assume $50,000 of the purchase price.

2nd. The National League will pay $10,000 per annum for each of twenty years, if the American will pay a like amount for a like term of years, to the legal representatives of R. B. Ward for lease & Equipment of Federal League Baseball Grounds—(Washington Park) The Ward Heirs to pay rental to expiration of lease & rent or sublease except for baseball purposes.

3rd. The National League will pay $25,000 to the Federal
286 League of Pittsburgh if the American League will pay a like amount.

4th. All players now with the Federal League shall be considered eligible; the Federal League to assume all their contracts and retain or dispose of their services in organized ball as the Federal League may determine with the option that Organized ball may assume all contracts of said players and dispose of said players as it—Organized ball may determine—

5th. The above terms of agreement are only intended to state in a general & brief way an understanding between parties hereto, and to constitute the basis of a final agreement to be entered into by & satisfactory to the American League of Pro. B. Ball Clubs and others of interest.

It is further understood that this agreement shall not be in effect until the suit between the Federal League vs. National League et al., before Judge Landis of Chicago shall be withdrawn with permission of the Court.

(Sgd.) AUG. HERRMAN.
(Sgd.) BARNEY DREYFUSS.
(Sgd.) WM. F. BAKER.
(Sgd.) JAMES E. GAFFNEY.
(Sgd.) CHARLES H. EBBETS.
(Sgd.) S. P. BRITTON.
(Sgd.) H. N. HEMPSTEAD.

(Sgd.) J. A. GILMORE.
(Sgd.) H. F. SINCLAIR.

Attest:
(Sgd.) J. K. TENER.

Thereupon after notice the defendants produced peace agreement dated December 22, 1915, which was offered and received in
287 evidence, and reads as follows:

This memorandum of an agreement made at Cincinnati, Ohio, on the 22nd day of December, 1915, between the National League of professional Baseball Clubs, The American League of Professional Baseball Clubs and the Federal League of Professional Baseball Clubs, a corporation (hereinafter referred to respectively as The National League, The American League and the Federal League), by and through their respective Presidents hereunto duly authorized, witnesseth:

That, whereas the purpose for which the several leagues, the parties, hereto, were created have not been and are not being subserved, and the present condition of professional baseball in the United States between the American and National Leagues on the one hand, and the Federal League on the other, is one of dissension, litigation and financial loss, and whereas the parties hereto have agreed to compose the differences existing between them and to evidence that agreement in part by this memorandum.

Now, therefore, for and in consideration of the common promises and undertakings of the parties hereto, it has been and is agreed as follows:

(1.) The agreements and undertakings of the parties hereto shall be binding upon each and every one of the several corporations members of or constituent to the several leagues, parties hereto.

(2.) All baseball players, managers and umpires heretofore or

now under contract, reserve, extension or option with any of
288 the constituent members of the Federal League, or said Federal League are hereby agreed to be eligible to play in any club operating under the National Agreement, and the said players, managers and umpires and the contracts existing between said Federal League or its constituent members and such players, managers and umpires shall be recognized and respected by the National and American Leagues and all Leagues subject to the National Agreement. A full and complete list of said players, managers and umpires is hereto attached and marked Exhibit "A".

(3.) The rules limiting the number of players under contract with clubs in the National and American Leagues shall be suspended until the beginning of the playing season in the year 1917 with respect to those clubs in which substantial stock interest has been or may be purchased by persons financially interested as stockholders in a Federal League Club.

(4.) The Federal League agrees that within thirty (30) days from date hereof, it will cause to be assigned to the American League and the National League, or the person designated by them, a proper and full assignment of that portion of the lease dated February 13th, 1914, between Edward H. Litchfield, party of the first part, and Robert B. Ward and George S. Ward, parties of the second part, covering and being limited to the period of time of said lease beginning on March 1st, 1918, and ending February 28, 1919, together with a proper agreement under which the said Federal League
289 Baseball Club of Brooklyn, or the owners of the said leasehold under said lease will not permit the said premises to be used in the meantime for the playing of baseball except when and at such times as the person to whom said property is assigned, as designated by the National and American Leagues, shall consent; and upon tender of such assignment and agreement, the said National and American Leagues will execute and deliver to the Federal League Baseball Club of Brooklyn, a corporation, or to the person or persons designated by it, each, their several twenty (20) notes of ten thousand dollars ($10,000) each payable one (1) year apart, without interest, and bearing the date of the tender of said assignment and agreement.

(5.) Within sixty (60) days from the date hereof the National and American Leagues each agree to pay to the Exposition Park Association, a corporation, of Pittsburgh, Pa., the sum of twenty-five thousand dollars ($25,000), upon the delivery to said National and American Leagues, of an agreement by said Exposition Park Association that its park in the City of Pittsburgh, Pa., will not be used for the giving of public exhibitions of the game of baseball.

(6.) The Federal League will within a period of sixty (60) days from the date hereof, cause to be executed to the National and American Leagues, or their nominee, a lease in proper and legal form, of the premises now used and occupied by the Federal League Baseball Club of Newark, New Jersey, for a term of ten (10) years, with all the usual covenants and agreements of such leases as are ordinarily

used in the State of New Jersey, at an annual rental of ten thousand dollars ($10,000), payable quarterly, with the privilege of purchase at any time within two (2) years from the date of said lease, 290 for the sum of two hundred thousand ($200,000) dollars, and if said privilege of purchase is not exercised by the lessees, then the lessor to have the right to terminate the lease at his option at the expiration of five (5) years from the date of said lease, upon written notice given sixty (60) days in advance thereof, the lessees to pay all taxes, general and special, cost of upkeep and also to keep the premises fully insured for the benefit of themselves and the lessor, and the said National and American Leagues agree to accept said lease and to assume all the covenants thereof.

(7.) The parties hereto on the date hereof have not arrived at an understanding of the rights and interests of the clubs in the Federal League and in the International League in the cities of Baltimore and Buffalo. Disposition of those interests has been referred to a committee of seven (7) persons, to consist of James A. Gilmore, president of the Federal League; a representative of the Federal League Club in Baltimore to be selected by Mr. Gilmore; a representative of the Federal League Club of Buffalo to be selected by Mr. Gilmore, E. G. Barrow, President of the International League of Professional Baseball Clubs, and the three (3) members of the National Commission. This committee is appointed with full power to act, and it is agreed that any conclusion arrived at by them shall be final and binding upon the parties in interest. A concurrence of four (4) members of the committee shall bind the committee and the conclusion of the committee shall be made in writing and when so made shall become and be the 7th clause of this agreement 291 as fully and effectually as though written herein.

In witness whereof the parties hereto have executed this memorandum in triplicate originals on the date first above written herein.

NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By JOHN K. TENER,
*President.*
AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By B. B. JOHNSON,
*President.*
FEDERAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,
By J. A. GILMORE,
*President.*

The witness further testified that on the specified committee to determine Baltimore's interests Baltimore had but one representative, who was to be appointed by Gilmore, who could appoint any one whom he pleased; that there were four members out of seven of that committee from Organized Baseball. Baltimore was not consulted

by Gilmore before he entered into the peace agreement. Other members of the committee were to be Tener, Johnson, Herrmann and Barrow, then president of the International League. The International League did not then have constituent club in Baltimore. It had discontinued operations in 1915.

Minor League players were trained at the expense of the minor leagues. Major leagues are prohibited from owning minor league clubs. There is no fund set apart by major leagues for the purpose of training players in minor leagues.

On recross examination the witness testified that Gilmore before signing agreement of December 13 had not consulted Balti-
292 more club; that on December 16 Gilmore sent a telegram to Rasin, president of the club, requesting him to come to New York the next day and bring Hanlon; that Hanlon was one of the stockholders and directors.

Rasin went to New York, and witness was not present at the conference between him and Gilmore. Janney, who was at that time one of counsel for the Baltimore club and a director, accompanied Rasin. Hanlon was one of 19 directors and was the owner of and leased the land to the Baltimore club.

The plaintiff, further to maintain the issue on its part joined, called as a witness in its behalf FRANK OTTO KNABE, who being first duly sworn, testified on direct examination as follows:

That he is now employed as a coach with Chicago National League Club; that he was connected with the Baltimore Federal League Club during 1914 and 1915 as manager, and employed some of the players; that he negotiated the contract with Irving K. Wilhelm, dated January 28, 1914, copy of which he then identified, and stated that the blanks were filled in with witness' handwriting.

Thereupon the said contract was offered and received in evidence, and reads as follows:

*Contract.*

Approved by The Federal League of Professional Base Ball Clubs.

This agreement, made this 28 day of January, 1914, between the Federal Baseball Club of Balto., Inc., of the city of Baltimore
293 in the State of Maryland a club member of the league known as "The Federal League of Professional Base Ball Clubs," party of the first part, hereinafter called the club owner, and Irving K. Wilhelm of the city of Wooster in the state of Ohio party of the second part, hereinafter called the player.

Witnesseth:

1. That in consideration of the faithful performance by the player of the conditions, covenants, undertakings, and promises hereinafter set forth, said club owner agrees to employ the player as herein provided, and to pay him, as compensation therefor the sum $10,500.00 dollars for three years payable in semi-monthly installments on the first and fifteenth days of each month during the period covered by

this contract, unless the player is then abroad with the ball club of the club owner for the purpose of playing games, in which event the installment then falling due shall be paid on the first week day after the return home of the ball club. The club owner shall have the right to retain the services of the player for such continuous length of time as it may desire immediately following the close of the playing season at the rate per day of one-thirtieth of his monthly salary as herein provided, provided notice thereof is given on or before the last day of the playing season.

2. The player agrees to perform for the club owner, and no other party, during the period of this contract, or any renewal or extension thereof, such duties and services pertaining to the exhibition
294 of the game of baseball, as may be required of him by the club owner, at such times and places as the club owner may designate, for the Federal League season for the years 1914-1915-1916 which period of time shall constitute the life of this contract, unless sooner terminated in accordance with the provisions of this contract. During the period of this contract the player shall devote his entire time and attention to the performance of his duties hereunder.

3. In order to enable the player to fit himself for the duties necessary under the terms of this contract, the said club owner may require the said player to report for practice at such place as the club owner may designate and participate in such exhibit contests as may be arranged by said club owner for a period of 30 days prior to the opening of the regular playing season, the club owner to pay the actual hotel and traveling expenses of the player from the city of Baltimore during said period. The club owner shall pay the actual traveling expenses of the player from his home to the training camp, or so much thereof as does not exceed the expense from the city the club owner represents to the training camp.

4. The club owner may, from time to time during the continuance of this contract, establish reasonable rules and regulations for the government of its players at home and abroad, and such rules and regulations shall be a part of this contract as fully as if herein written, and shall be binding upon the player. For the violation of any such rules and regulations, and for any conduct impairing the
295 faithful and thorough discharge of the *of the* duties incumbent upon the player, of which the club shall be the sole judge, the club owner may impose reasonable fines upon the player, and deduct the amount thereof from the money due or to become due to the player, or may suspend the player without pay for any period of time, not exceeding ten days, during which period of suspension the player shall not be entitled to compensation under this contract. The club owner shall immediately upon suspending or fining the player furnish the player a written notice to that effect, stating the amount of the fine or the duration of the suspension and the reason therefor.

* * * * * * *

6. It is further agreed that should the player become disabled, as provided in the preceding section, he will subject himself to medical

examination and treatment by a regular physician in good standing, to be selected by the club owner, and such examination and treatment, when made at the request of the club owner, shall be at the expense of the said club owner, unless made necessary by some act or conduct of the player contrary to the terms of this agreement, or the rules and regulations made hereunder.

* * * * * * *

Nothing in this clause relieves the club owner from the obligations imposed by paragraph five.

8. It is understood and agreed that the club owner shall furnish the player two complete uniforms, exclusive of shoes and
296 gloves, which shall be and remain the property of the club owner. It is further understood and agreed that the club owner may withhold from the third pay due the player the sum of thirty dollars to insure the return of the two uniforms to the club owner by the player.

9. It is understood and agreed that after the player has given service in the Federal League for any portion of ten different years, the said player shall be given, if he demands it, his unconditional release.

10. The club owner shall have the exclusive right and option of extending this contract from year to year upon like conditions, except that the compensation to be paid the player shall be five per cent each year in excess of the sum named in this contract, provided that written notice of the exercise of such option shall be given to the player on or before September fifteenth.

11. The club owner shall provide and furnish the player while "abroad" or traveling with the baseball club or team in other cities, with proper board and lodging, and shall pay all proper and necessary hotel and traveling expenses of the player. At all other times the player shall pay all his own expenses.

12. It is understood and agreed between the club owner and the player that all written agreements between said parties, whether embodied in this contract or be a part therefrom, shall be binding upon both parties, and all contracts shall be in writing and executed in triplicate by the parties hereto, one copy of which shall be filed with the President of The Federal League of Professional Base Ball Clubs and one copy shall be given to the player.

297 In witness whereof, the club owner has caused these presents to be signed by its President, under its corporate seal, and the player — hereunto set his hand and seal, this 28th day of January, 1914.

THE FEDERAL BASEBALL CLUB
OF BALTO., INC.
CARROLL RASIN, *Pres.*
IRVIN K. WILHELM.

Attest:

[SEAL.] L. EDWIN GOLDMAN.

Irvin K. Wilhelm being duly sworn upon his oath, says that he has not at any previous date signed a contract for similar service for the year of nineteen hundred and fourteen.

IRVIN K. WILHELM.
(Player sign here.)

[SEAL.] GEO. F. BRELSFORD,
*Notary Public, No. 147,*
*New York County.*

Certificate No. 4113. Filed in New York County.

Advanced the sum of fifteen hundred $1,500.00 dollars when signing, to be deducted from three years five hundred $500.00 dollars off each year.

IRVIN K. WILHELM.

Counsel for plaintiff then read so much of Section 1 as provided for salary of $10,500 for three years, and asked if witness had any difficulty in getting this player to sign a contract with the Baltimore Federal League Club, to which question counsel for defendants objected pro forma and asked for statement of the purpose of evidence offered.

298 Counsel for plaintiff then stated that he would ask witness how old a man this player was and witness replied that he did not know his exact age, but he has been in baseball for a number of years; that he was considered an old player.

Counsel for plaintiff then put the following question:

"Q. How does that salary of $10,500 for three years compare with the salaries which had been previously paid to men of that class of players?"

Defendants' counsel thereupon stated that the question must be objected to as irrelevant unless there was some offer of proof.

Counsel for plaintiff then stated that what we offer to prove by this witness is this, that in negotiating with the players for the Baltimore Baseball Club when it was first organized they had great difficulty in securing players at salaries which were not excessively large, larger than they had been receiving before in Organized Baseball, and to show the reasons why he had that difficulty, the reasons being that they were afraid to make a contract with the Federal League Club lest they might be disqualified, or put on what they call the blacklist, the ineligible list, the result of which would be that they would be ineligible for employment by any other club in organized ball; that in the event of the Federal League's not being successful, they would be out of a job for the rest of their professional lives, or might be.

That they proposed to prove that in two ways, first by this witness' knowledge of the usage and practice, the unvarying custom existing at that time in organized ball, and, secondly, by what the men told him with whom he negotiated, what they gave as their reasons for their unwillingness to contract.

We offer other evidence in this case to show the actual practice of blacklisting any man who ventured to deal with an outlaw club, as they would call the Federal club; and when this witness went
299 to negotiate he was met with that difficulty, that they were afraid of the enforcement of this co-called reservation clause, or something of that kind, and that is the reason which they gave.

Thereupon counsel for defendants objected to the offered proof and to the question as irrelevant and incompetent, for the reason that what passed between the witness and those to whom he spoke is not evidence that binds the defendants, in view of the fact that the plaintiff had already by the best method of proof established what was the elaborate system of rules and regulations which precisely provides what the consequences would be if those who were parties to contracts in Organized Ball were to violate their contracts with reservations. The objection was by the Court overruled, and exception thereto duly noted.

Thereupon witness answered: "Well, I do not know what the ball player was getting, but I feel sure that I gave him more than he got for the few years before that. He was once a major league ball player, and he drifted back to the minors, and that is where I think I got him, from Rochester. He really belonged to Rochester, and I feel sure that I paid him more money than he had received——

The Court: I do not think the fact that the witness feels sure of something is admissable, if he does not know anything about it.

The Witness: I do not know the salary of the previous year.

The Court: Then that will be excluded.

By Mr. Marbury:

Q. Are you familiar with the prices which minor league clubs had been in the habit of paying for ball players of that class? A. No, sir; I don't know their salary list. I was not in the minor leagues for the last ten or twelve years. I was in the major league.

300 That almost all players wanted three-year contracts because they realized that they were going into a new organization and that they were leaving an organization that had been in the field for a number of years, and therefore they wanted to be sure of getting three years, and that is why they insisted upon a three year contract; that a major league player would not come for less than three years, and witness does not think he signed one for less than three years. Players also felt that if they left Organized Baseball they would have a lot of trouble getting back into it; that was the reason they gave me.

The plaintiff, further to maintain the issues on its part joined, called as a witness in its behalf JAMES M. WALSH, who being first duly sworn testified on direct examination as follows:

That he resides in Baltimore and is now employed with the Bethlehem Steel Corporation at Sparrows Point in one of the Mechanical

departments; that he began playing professional baseball in the Central League, Dayton, Ohio, in 1905, which was a club in a class B minor league of Organized Baseball, where he remained for one year and then went to South Bend, in the same league. Asked to state the circumstances under which he was released to South Bend and as to what happened, the witness answered: "I just could not state those circumstances. I do not know whether I was a good enough ball player or what it was, but anyhow, I was released to this other club;" that he went to South Bend where he remained a couple of seasons and then went to Philadelphia National League club in 1910, where he played until the start of Federal League—the fall of 1913. Thinks his minor league contracts contained reserve clause.

In the winter of 1913 had received information through
301 the newspapers alone of his transfer to Montreal of the International League. He had then served out his year with Philadelphia and was not under contract for 1914 season, and no contract or terms of employment had been offered him for 1914 by the Philadelphia Club. Witness had never been to Montreal and was not consulted whether he would care to go to Montreal, and did not go, but signed with Federal League Club of Baltimore about January or February, 1914, and played with that club nearly two seasons. From there went to St. Louis Federal League Club, to which club he had been assigned by the Baltimore Federal League Club, his contract with Baltimore being assignable. Was under three-year contract with Baltimore, which was longest contract he had ever had. Contract did not have the ten-day clause, it having been stricken out when he requested it because he had reason to believe that in leaving Organized Baseball he would have to be assured of something for three years the same as the rest. Does not know why he could not go back to Organized Baseball. "That is just an opinion among the baseball players, that they cannot, that is all." Q. "That is if they ever go to an outside league." A. "That is right." His year was up with the Philadelphia club and he did not jump his contract. The Philadelphia club made no objection, but the Montreal Club sent a representative to his home, a Mr. Bransfield, its manager, who tried to persuade him to go to Montreal. Witness told he had signed contract with Baltimore and he wanted witness to abandon it—witness did not know upon what grounds; but Bransfield claimed they had a right to witness' services because he had been sent there from the Philadelphia Club on the reserve clause in his Philadelphia contract; that every contract has a reserve clause in it that holds you over for the following year. But Mr. Bransfield did not suc-
302 ceed in persuading witness to jump his contract with the Federal League club. The witness later received a letter from the president of the Montreal Club, whose name was Lichtenheim, which letter was filed in the Chicago suit. Counsel for plaintiff here offered in evidence a paper which he stated was a certified copy of the letter to which witness referred, and asked witness: "Suppose you glance at it, look it over, and see if looking at it, it recalls to your memory whether that is the letter to which you refer", to which wit-

ness answered (after examination) "Yes, sir". The paper so offered was received in evidence, counsel for plaintiff stating at the time of offering the same that it was not offered for the purpose of proving the facts set forth in the letter itself but to prove that such a letter was written and received by witness. Said letter is as follows:

"Montreal, Canada, Feb. 20, 1914.

"Mr. James Runt Walsh,
"Base Ball Player,
"Lima, Ohio.

"DEAR SIR:

"Just received your favor 19th. I expect Manager Bransfield will be in your city within the next few days, as he is at present in Chicago and St. Louis.

"I am very much surprised, after your previous letter, that you at least did not tell me how much you expected to get from us in order to come here, and your action in accepting their offer, whether it was for one year, or three years, or for twenty years, does not look good. Not only that, on the face of it, I think the least you ought to have done was to have notified me when you signed with the Federals, and not kept me in the dark, as I understand you signed with the Federals some weeks before you wrote me your first letter.

"Now everybody has got a right to do what they wish, but
303 I think the least you might have done was to have wired me how much you would want to stay in organized Ball, and perhaps you will find before you get through, that the advance money will be the only money you will get; and if you start to play with them, you are blacklisted from organized Ball for three years, and if their league blows up I don't know what you will do for three years."

By Mr. Marbury:

Q. What did he mean by "the advance money?" Did he mean the first money you were to get from the Federal League? A. I imagine so.

Mr. Marbury: This continues:

"However even if you have signed with them, I have still sent Manager Bransfield to see you, and you can still sign with us, if we can come to terms, and then let them take their contract to the courts, because you know that organized Ball will last, and you also know that you make your living in organized Ball, and had it not been for organized Ball, you would not to-day have been with the Federals."

By Mr. Marbury:

Q. Did you learn all you know about baseball playing from organized ball? Where did you begin playing? A. I got all my

knowledge of baseball through organized baseball, that is true, because when a boy is growing up on the lots, he does not get much knowledge about baseball. It is only ability then.

Q. You went through the minor club course, so to speak? A. Yes, sir.

Q. Of course you did not get any of the gate receipts, did you? A. Only in salary.

304 Mr. Marbury: This proceeds:

"What I am complaining about is that you did not even wire me or write me telling me that you had their offer, and letting me know what you wanted, or even giving me a chance to get your services, and it looks to me as if the advance money they gave you was the bait."

By Mr. Marbury:

Q. Do you want to make any statement about that, Mr. Walsh? A. I acknowledged the letter.

Q. This was a letter received? A. Yes sir.

Q. You talked it over with Mr. Bransfield after this letter, did you not? A. I do not know whether it was after or right before.

Q. He says in this letter that Bransfield is going to come to see you. A. It was along at that time.

Mr. Marbury: The letter goes on:

"Let us assume that this Federal League does go through and supposing you were to get hurt or to get sick, they would not have to pay you, and the result would be that you could not come back to our league, and therefore you would probably be without work for two or three years. Don't you think you were very foolish, for a few hundred dollars, possibly to tie up with these people, especially in the face of your probably having a fine future in Montreal, and possibly being made the captain or the Manager later on. Just think this all over, and if the amount that they have advanced you is not too large, perhaps we could arrange to pay it back for you to them when you report to us, and sign you to a contract, because
305 their contract is only good in law, and you know they will not go to the courts.

"I am quite sure that Manager Knabe, or any of these other managers, would not do anything for you if you get hurt, or if you took sick, whereas in organized Ball we have to take care of you, and I think you must know by now that this Federal League started out to be a Major League. I think you have already seen enough to know that they won't even be as good a league as ours, as they have only obtained very few Major league players, and the big bulk of their players come from our league and lower leagues, and I am quite sure that you know the public will not look on them as a Major League.

"Don't you see that their whole trick is to get you signed to a contract so as to be taken over by organized Ball, which will never be the

case, but if they were taken over by organized Ball, you would be in a worse position with them than you would be with us, because they would chop you down quickly, knowing that you could not go anywhere else.

"Now just think this over and you will see that it is best to send them back their money; if they advanced you any money, and we decide to pay it back for you, and sign another contract with your real employers, who have always taken care of you, and who have made you what you are, and if you sign contract with us we will protect your interests.

"I am glad to know that there are some players who speak kindly of me. As far as I am concerned I think my reputation is well enough known by now, both in business and in sport; at the same time I like to have everybody's good will, but I think myself that you have not acted fairly, because you did not tell me that you
306 would go with them, but led me to believe that you had not made up your mind, and also when you did make up your mind, you did not even give me a chance to get your services. I am quite sure that you cannot find any Ball player who will tell you that I ever treated him in this way, and looking upon you, without knowing you, as a man with moral honour, I think that you owed it to me to at least let me know how much you would want to come here, and then of course, if I did not wish to pay you this price, you could then have signed with them, if you still wished to take the chances. But in your case you did not do this, you simply jumped without saying anything to me."

By Mr. Marbury:

Q. As I understand it, you were under no contract at all at that time? A. No sir.

Q. And you did not want to go to Montreal? A. No, sir.

Mr. Marbury: The letter proceeds:

"You know that your services cost this club a lot of money from the Philadelphia Club, and you have wilfully made us lose this money, without even giving us a chance to get your services. If you think this is being on the level, I don't, and when you see Manager Bransfield next week, which I hope you will do, as doubtless you will be at home now, I trust that you will show him this letter, and I also trust that your better judgment will prevail, and that you will tell him the whole truth, how much money these people did pay you in advance, and how much salary you want, and if the amount is not the whole club, I will try and meet you, but if it is too large and beyond what any player is worth, I will not consider it, but I think you owe it to me to at least give me a chance of your services, and I therefore will be glad if you will wire me on receipt of this,
307 how much money they did advance you, and what salary you want to play here, as I am sure you would be glad to play for less in organized Ball, and be sure, than accept more to play in a league which may not last the whole season, and I don't think you

want to throw away three years of your future for the sake of a few hundred dollars advance money which you may have received, and which if it is not too much I may be willing to pay back for you, and take it out of your salary the same as they will do, because with us you know you are sure, whereas with them you don't know what will happen, but even if they do last, there is nothing to stop them throwing you out at any time, and cancelling your contract as soon as they know you cannot get back to organized Ball for three years, and which you know is the case. So I think you are much better off with organized Ball, and which is the devil you do know, instead of outlaw Ball, which is the devil you don't know, and it must sound sensible to you, that organized Ball, for whom you have worked for many years, can and will do more for you, than your new owners, who are only speculators, and who have started out to bluff the public right from the jump, because they have promised Major League Ball, which you know they will not have.

"They also promised to have a club in Toronto, which they will not have, and I think you will find before you get through that they have made a great many other promises, which they will not carry out, whereas with organized Ball we must carry them out, and if you know of any promise I ever made, of any kind, which I did not carry out, I will be glad to hear of it. So don't be foolish and let these people blindfold you, which they have done with several players, and which players would be very glad to come back to organized Ball, but it is too late, because their clubs won't take them back, but
308 in your case I will take you back, if your terms are not too much, before you make this fatal jump, but once you have made the jump and played one game for them, I could not take you back if you were willing to play for me for $100.00 per month, as you must stay out of organized Ball for three years, the same as any other player who plays one game for the Federal League.

"With kindest regards and trusting you and Manager Bransfield will get together, and waiting your further favours, I am always,

"Sincerely yours,

"SAM E. LICHTENHEIM,
*President.*

"P. S.—If you wish on receipt of this letter, and in case Manager Bransfield has not reached your city, you may wire me how much money they advanced you, and what salary you will want to play with us, providing we pay them back the amount they advanced you, and deduct it from your salary every month, and then you must understand that you have a chance of being captain or manager here later on, whereas with them as soon as your usefulness as a player is finished, or you meet with an accident, which I hope you won't, they would throw you on the street, and you could not work for them, and you could not work for us, and all you would have to depend on then would be the advance money they gave you, and which by that time would probably have all been spent. So don't throw the substance away for the shadow, and get caught by these alluring offers which cannot materialise, and you know as well as I do that they

annot pay these salaries and take it at the gates by playi: ; Minor
eague Ball, and you also know that they will play nothing but
linor League Ball, and will also have to play when we are away, in
ther words they will have to take our leavings, so I don't see how
our future is in any way secure with them. And if you lose your
ability as a player through accident or anything else, Mr.
09 Knabe would not make you any manager nor would he do
very much for you, and I think you know it as well as I do,
ut if you are going to get caught for a few hundred dollars advance
oney, you are making your own future, and if anything goes
rong you have nobody to blame but yourself, and you know as well
s I do that outlaws in business have never been successful, and with-
ut organization there cannot be any success, and if we were not
rganized your position as a player would not be secure, and I think
ey don't know from week to week what cities they will play in, and
very week sees them change their cities, so you see they are only
aking a stab to be taken into organized Ball, but they have guessed
rongly, and organized Ball will never recognize them, and I think
ou know this already, and if you don't know it you may write to
resident Ban Johnson or Governor Tener, and get their reply and
nd out for yourself that what I tell you is correct.

"SAM E. LICHTENHEIN."

Organized Baseball regards as an outlaw organization one that
es not come under the head of Organized Baseball. Witness was
nt to St. Louis Federal League Club by Baltimore Club in second
ason, 1915. Finished season with St. Louis and following year
s sent to Memphis in the Southern Association. That he was sent
to Memphis by the St. Louis Club of the American League—
0 the American League—the owners of the Federal League Club
of St. Louis having bought the American League Club in St.
uis and the Federal League Club went out of existence. Memphis
s class A league, where he played in 1916. Has not played pro-
ssional ball since. Witness does not know just why, but in his esti-
ation he could not make proper arrangements for salary and "one
ing and another," and he just quit professional baseball; that he
uld not go to any other club without the consent of the Memphis
ub; that while he did not have a contract to stay there forever, yet
was reserved by the Memphis Club for the following year; that
ery contract has the reserve clause in it whereby the club has the
ivilege of carrying you for the next year, each year it is the same
ing, continuously; that the Memphis Club offered him employment
the next year at a salary of $250 per month, witness thinks, for
e months, which was about $250 to $300 less per month than the
ary he had received in the Federal League; that his contract in
e Federal League called for $3,000 a year and in Memphis it was
,250; that he did not accept the offer of the Memphis Club for the
lowing season because witness did not think it was enough for him
get along with and that his services were worth more; that he first
gan playing baseball in 1905 and has been playing for about
rteen years; that he is 32 years old; that in witness' opinion he is

not yet too old to play ball; that he plays ball now and has been playing in the steel league at Sparrows Point; that they play once a week—Saturdays—and holidays; that he did not think $1,250 was a fair salary for a man of his talents at the time it was offered by the Memphis Club and they would not give him any more money; that he received in 1916 from the Memphis Club the amount called
311 for by the Federal League contract. Memphis later agreed to let him deal for himself through Memphis with some other club and eventually agreed to sell him to Rochester of the International League, to which he reported and could not make arrangements there for terms either and left there.

Q. Were you allowed to make any effort to get terms from any other club except the Rochester? A. No, sir.

Q. They would not consent to your negotiating with any other club? A. No, sir. (After a pause). Yes, anybody that I found fit to go with, they were willing to sell me when they found out I did not want to come to Memphis for the following year, 1917.

Q. You had to get their consent? A. A. Yes, sir.

Q. Then you could negotiate with anybody else? A. Yes, sir.

Q. With any other club? A. Yes, sir.

Q. Was the Rochester club to pay the Memphis Club anything for the transfer of your contract? A. That I do not know, but I imagine so.

Q. That is generally done? A. Yes, sir.

Q. Of course, they do not make transfers of contracts for nothing. I want to understand that. They tendered you a contract at the end of the season of 1916 for the following year for $250 a month, and you would not accept that. Did they tender you another con-
312 tract at the end of the year 1917? A. I got a contract from them again this spring, yes, sir, this past spring, February, I think.

Q. At the end of each year they have been offering you contracts, have they? A. Yes, sir.

Q. Why do they do that? Do you understand why? A. I do not understand the reason why, no, sir, with the exception that they still reserve me to their club.

Q. The object is to reserve you, so that you cannot make any other contract without their consent. That is the purpose of their offering you these contracts every year? A. Yes, sir.

On cross examination the witness testified that when he first became professional ball player he received $150 a month from a club in class B, where he remained for one year; that the Dayton club sent him to Terre Haute in the same classification, after which he went to South Bend in the same league, where he received about $250 a month. From there he went in 1910 to the Philadelphia National League Club by draft; where he played as utility man and received about $1,400 a year, which was increased from year to year until it reached $2,000 or a little more for the last year, 1913, he was with the Phillies; that he still continued in the position of general utility player. At the expiration of the playing season of 1913 the Philadelphia Club asserted the right under the reserve clause to assign wit-

ness to the Montreal Club, and witness guesses that the waivers were obtained for his release to the Montreal Club from all the clubs in the National and American Leagues, because that was the system that operated at that time; that a man in a higher classification cannot be sent to a lower until all the clubs in the high classification have a chance at him. Witness thinks waiver price was $1,500
313 at that time. Montreal was in class AA. Did not go to Montreal, but signed with Baltimore Club for three years at $3,000 per year, which assigned him to St. Louis Federal League Club, where he played the remainder of the 1915 season, and when the St. Louis Federal League Club with which he was playing passed under the control of the National Agreement, witness again became a player in Organized Baseball. Subsequently he was sent to the Memphis Club, a club of lower classification, under the waiver system—it being necessary to obtain waivers before he could be sent to Memphis. Played one season in Memphis, 1916, for the salary provided for in the Federal League contract, at the expiration of which he was tendered a contract for the ensuing year at a decreased salary, which for reasons of his own he declined to accept. Witness does not know that Memphis club was acting other than on a good faith estimate of the value of his services in offering a reduced contract. All those leagues have salary limits and that year it was about $2,800 a month for 14 players, that is, the aggregate of the salaries that they pay the 14 players must not exceed the limit of $2,800 per month. This year witness received contract from the same club calling for only $200 a month. Has been working for Bethlehem Steel Corporation for last two years. Memphis was in class A, and he was subject to draft by class AA and by the major league clubs. Never played with Rochester, which was class AA. Under the rule where player comes from lower classification he is to receive certain increase in salary, and Rochester offered the same contract that he had been receiving from Memphis, and he thought they were not living up to their rules. It was then that he engaged in his present work.

On redirect examination the witness testified, that th- leagues themselves fix salary limit. Players have nothing to do with this.
314 The limit is sometimes changed. Asked what does waiving on you mean, the witness replied: "It means by the players, that they do not want you,"—that nobody in the same league wants your services at all at the price fixed. There is a fixed waiver price. The club receives the waiver price. That if witness was under contract and was sent to a lower classification he thinks that under baseball laws the club purchasing would have to live up to the contract. When a club pays to the club from which he came the waiver price, (after expiration of contract season) it takes the chance of negotiating with the player as to his salary. It is always a matter of negotiation to an extent between the club and the player. If the play- will not take what they want to pay him they can put him on their reserve list. When witness could not come to an agreement he went out of professional baseball altogether and went to doing other kinds of work. Witness' present work includes a little of everything in the ne-

chanical line. Witness did not give up professional baseball because he preferred mechanical work to professional baseball.

The plaintiff further to maintain the issues on its part joined, called as a witness in its behalf GEORGE JOHN MAISEL, who being first duly sworn testified on direct examination as follows:

That he began playing professional baseball in 1912, when 20 years old, and previously had played amateur ball around Baltimore since he could walk. Started with Baltimore Eastern League and played during the spring and was sent under optional agreement to Harrisburg of Tri-State League, a minor league club, a part of Organized Baseball. Optional agreement means farmed out, by which is meant that he would play with the lower club to a certain date, when he could be recalled. Remained in Harrisburg during the summer and finished the fall in Baltimore. Was then drafted to St. Louis American League at a salary of about $325 a month for six months.

315 National Commission ruled he was properly drafted from Harrisburg club, although he had signed with Baltimore, having overstayed option period by two days.

St. Louis sent him satisfactory contract and witness signed it. Contract contained ten-day clause and reservation clause, under which they could hold on to him from year to year in professional baseball, unless they saw fit to send him somewhere else, but could not prevent him from going out of baseball business altogether into any other employment. "They figure they set a value on you—it all depends on the type of ball player you are and the salary they figure you are worth. If you cannot come to terms, in most cases it can be pretty well adjusted under those conditions." "If you can't come to terms you can't play in organized baseball." If you can't come to terms with that one club and they want to hold on to you they can either say "You play with me or you play nowhere." Played in St. Louis until about the middle of the season, when he was sent back to Baltimore Internationals, to which he was actually sold later in the season. This was in 1913. Guesses he was not what they called fit for major league ball at that time. Played with Baltimore until the end of the season of 1913. Following winter was sold to Scranton of the Tri-State League by Baltimore. Signed with Scranton and played there in 1914 and 1915. In the fall of 1915 was bought by Detroit Americans. Signed an iron-clad contract that fall without the ten-day clause for season of 1916. This was signed while the Federal League was still playing, and the ten-day clause was omitted to protect themselves because players could not jump to the Federal League, could not go to the Federal League with that kind of a contract, while the Federal League was competing with them they struck the ten-day clause out of witness' contract under which they had the right to discharge you any minute.

316 Went south with the Detroit club, and about six weeks after the 1916 season opened was sent to Montreal, where he played all summer and where his playing showed he deserved another trial in the big league. About a week before close of season notice was

sent to him by the Detroit Club, stating his outright release to San Francisco.

Next spring received a contract from San Francisco, which was not satisfactory. Sent his terms to San Francisco, and in the meantime received a letter from Detroit stating they thought $300 a month was enough for him in the minor league. Witness had an outright release from Detroit Club and was supposed to be the property of the Frisco Club and he thought it peculiar that Detroit should tell him what he should play for. In the meantime San Francisco sent him a contract for $2,500 for the season, which was what he had asked, and he left for the Coast. After this a letter was received at his home stating he was suspended unless he reported to San Francisco. Played in San Francisco, and about the middle of the season he was informed that he still belonged to Detroit on verbal agreement between presidents of the two clubs. Finished the season in San Francisco, and in 1918 got contract from Detroit which was very good and which he signed. In the meantime went into the army, where he remained until about a month ago. This year's contract from Detroit Club offered him $250 a month, witness could not figure playing for that as he knew he was worth more so he wrote and stated his case exactly, saying he had been held down long enough; that he had not been able to get a show in the big league, although his records in the minor leagues showed that he had played good ball to warrant another chance. He was then released to the Portland club of the Pacific Coast League, and is now negotiating with that club for terms and is holding out until he gets his price.

"If I don't get it I guess I will have to go and go to work
317 somewhere,"—outside of Organized Baseball.

Detroit retained control of him probably because they did not have any room at the time and wanted to have him available. The "clause in the contract states that they can hold on to you from the end of this season, that will hold you until next year—you still belong to that club. Even if you sign a one-year contract and your season expires say in October, they can still sign you up for the next year." Asked for how many years in succession, the witness answered: "They can sign you up as long as they want, as long as you are playing, unless they feel disposed to send you to another club." Didn't get any written offers from any club other than Detroit and those to which he was assigned by Detroit. He was not allowed to negotiate with any other club. "This is the regulation in the contract." Asked if any other club offered to take him if he could get his release from Detroit, the witness stated that they dare not,—"they can't meddle with one another's players—it makes too much dissatisfaction."

On cross-examination the witness testified that he made good record in his minor league playing. Was twice sent down from major leagues. Was in very poor shape when he reported to St. Louis club and did not go south on the spring trip and was sent to a minor league club where he again made good; that he first went to Baltimore, before he went to Scranton, where he was in bad health practically the whole year. The next spring he was in very good shape

and from 1914 on. Detroit bought him and he also had offers from Cincinnati—that was his second venture in major league ball. In Detroit he believes that he did not play more than a half a dozen full games—they did not give him the opportunity; that his position was the outfield, but Detroit thought he was an infielder and played him on third base, which position he was not accus-
318 tomed to, and he only played the latter part of the game—when the game was lost. They then sent him to Montreal. While in Montreal the Detroit Club paid him the difference in salary between what Montreal paid and what his contract with the Detroit Club called for; that before he went to Montreal he saw the manager of the Detroit Club and told him that if he did not have a chance to be played regularly at that time he would rather be sent to some minor league club where he could be played in a position where he could do himself justice; that when he signed up with the Detroit Club the ten-day clause in the contract was struck out at their suggestion, as witness was not particular about the ten-day clause being struck out because the Federal League was running at that time and if he were turned down by the Detroit people he could go to the Federal League. When ten-day clause is stricken out contract is binding for the season and you must be paid accordingly on that contract and cannot be released without the player's consent. When ten-day clause is in club can release player on ten days' notice. "If the owners of the different ball clubs would treat ball players fairly and squarely—the ten-day clause is the only thing to keep organized baseball together." It might be made an instrument of abuse if they don't treat you squarely. The same thing is true of the reserve clause. It is a means of holding a team together. It can be used oppressively. Had accepted Frisco Club's terms by telegraph, which relieved him of his suspension. After being released from the service he did not sign the Detroit contract. Then they sent him to Portland. Negotiations with Portland are still pending. Coast League as a rule has pretty good salary limit. In 1917 he got $2,500 for the season and would sign for this year if he could get that amount.

On the subject of changes in minor league salary limits witness said "You have got to figure on the men that draw in the
319 gates, just like the same way the big men in the big leagues, you have got to figure on their drawing power accordingly." Most of minor leagues have salary limits which have been found by experience to be necessary to keep the club in existence. Some years back they did not have any salary limits. Now it is a practical necessity. Has told Portland he wants $400 a month. Has a job offered him in Baltimore that will pay him close to $2,600, in the shipyard, where he can play one or two games a week, and where he would be better off financially.

The plaintiff, further to maintain the issues on its part joined, called as a witness in its behalf JOHN G. PRIEST, who being first duly sworn, testified on direct examination as follows:

That he has lived in Baltimore for about a year; that he played

professional baseball for eight years, beginning at Danville, Va., in 1910, when he was 19, which was in the Virginia League, a class C organization. Was bought during the season by New York Americans. Did not sign a contract with New York that year, but was sent to Indianapolis during the winter, presumably under optional agreement. Had monthly contract with Danville at $100 a month for about four months. Contract had 5-day release clause. It also had usual reservation clause. Does not know by what agreement he went to Indianapolis. Signed a contract with it before 1st of February which was practically the same contract he had with Danville club, but was in higher classification—AA league. Quite an advance in salary. Also had the 5-day release clause. Remained in Indianapolis about six weeks. Did not come up to requirements. Went back to New York and remained about two months, playing in one or two games, and was then sent to Richmond in the Virginia class C league at a cut in salary of $75 a month. Still belonged to
320 New York by some agreement witness never knew and so went south with it the following spring—1912. Made new contract with New York in 1912 and was sent by them to Albany, which was satisfactory to him. Returned to New York in the fall and started west, when he was taken sick. Was not notified of suspension or anything, but his pay stopped. In the spring of 1913 again went south with New York—still belonged to New York—and was later sent to Rochester, International League. There he remained for three years being reserved each year. In 1914 got fairly good money at Rochester, and in 1915 his salary was cut $100 a month. Was notified that if he did not care to sign at their figures he had their best wishes. Still belonged to Rochester in 1916 and played for them that year, when his salary was cut again $75 a month. Refused to play with them, and he was sold to Omaha in the Western League, who would pay him more money. "They wanted me, you see."

Omaha paid $250 to the Rochester club for his transfer, no part of which he received. Did not pay much for minor league players in 1916, but does not know just why. Witness was then asked: "Had the Federal League gone out of business then?" and he answered, "Yes sir". Was released and returned to the east where he got in the Richmond club of the International League. Was released there in the fall and was free and signed with Bridgeport, where he did fairly well in 1917. In 1918 after having a good year in Bridgeport they sent him contract for $130 a month. Could not see fit to play with them and had to get another job, where he is now, at Sparrows Point shipyard, learning ship fitting. Asked as to what is meant by saying that he had to go to work, the witness answered: "Well, you see my salary was cut down to such a low figure that I had to get out of baseball, professional baseball." Asked why he could not go to some other club, the witness stated because
321 he was reserved by the Bridgeport club; that he had an offer from a club, but he would not benefit by leaving the shipyard; that he was told that if he was a free agent the club would give him what they would have to pay the Bridgeport club for him,

which would make a fairly good salary; that the club had negotiated with Bridgeport for the purpose of buying him if witness would consent to play with them, but he had a fairly good job over there and they offered him pretty good money, but it was not as much as he was making—but if he were a free agent the club could add the price that it would have to pay Bridgeport to get him and witness would be satisfied; that he had been reserved by the Bridgeport club.

Q. Does that mean under that reserve clause that you cannot negotiate with any other club until they give their consent? A. No, sir, you can't; you can if you are willing to be sold to that club.

Q. Of course. But in selling you, your club, the one that has the reservation on you, it has given its consent. But suppose it does not want to give its consent, can you deal with another club? A. No, sir.

Q. In organized ball? A. No, sir.

Q. Or out of it? A. Oh, yes, out of it, sure.

Q. Are there any professional baseball clubs—— A. No, sir.

Q. Then you cannot deal with what does not exist, I suppose? A. No, sir.

322 On cross examination the witness testified that he was playing with Richmond when he became a free agent in the fall of 1916. As such he was entitled to make the best contract he could anywhere in the country, and did make a contract with Bridgeport. It is under the reservation provisions of that Bridgeport contract that witness was prevented from making any new negotiations with any other club than Bridgeport. Never knew the arrangements under which New York retained him while he was playing with other clubs. Did not then know about being farmed out, but that is probably what occurred. As a free agent, signed with Bridgeport for $150 a month so they could keep in the salary limit, but really received $65 in addition on the side as a bonus which was more than they ought to have paid according to the rules of the organization. Later contract under the reserve clause $130 a month without bonus was offered which witness said he could not afford to accept. The new contract offered was for 1918. The bonus paid in 1917 had no relation to any Federal League situation but was simply an attempt by an individual club manager to beat the salary limit by a side agreement.

Further to maintain the issues on its part joined, the plaintiff offered and there was read in evidence the deposition, taken in Philadelphia in June, 1917, of DAVID L. FULTZ, who have been duly sworn testified on direct examination as follows:

That he has been connected with baseball since 1898, when he was a major league player with the Philadelphia National League Club, from which he went to Baltimore National League Club, and then to the Milwaukee Club of the American League in 1900. From there he went to the Philadelphia American League Club, in 1901.

Mr. Mack was owner or manager of the Milwaukee Club when
323 witness was with it, and he has ever since been manager of the Philadelphia American League Club. Witness went to Philadelphia during the period of competition between the American and National Leagues. National Agreement was signed in September, 1903. He played with Philadelphia in 1901 and 1902 and then went to New York American League Club. Has practised law in New York City since 1905. Is now president of the Baseball Players' Fraternity, which is an organization, among the players in the nature of a labor organization, to protect their rights. Has been president since its organization in 1912.

At the time of the organization of the Players' Fraternity, the organization playing professional baseball were the National and American Leagues and various minor leagues, around forty in number. They were all part of Organized Baseball.

324 Asked if they were in competition with one another witness said they were all under an agreement. Under National Agreement competition for players' services is hardly possible. Among the clubs in Organized Baseball there may be competition for the services of free agents, including men who have not yet signed an Organized Baseball contract and college players. After player has once signed contract with the reserve clause he cannot arrange for employment with any other club in Organized Baseball.

Witness is familiar with the players' contract. Has only seen two major league players' contract which did not contain the reserve clause, one being his own with the Philadelphia Club and one that of Max Carey with the Pittsburgh Club in 1916. His own contract was signed in 1901, or possibly 1900. Has seen a great many minor league contracts which did not contain that clause. Asked if the player in organized baseball does not sign a new contract at the salary that the club offers him what recourse has he, witness replied if a player is going to continue in baseball he must sign a new contract at a salary the club offers him.

Q. Cannot he go to any other league or club and offer to contract with them if they do not agree? A. No other club in organized ball would do business with him, no.

Q. So that if they cannot agree, he retires from baseball under the present conditions. Is that right? A. Unless he can come to an agreement, yes.

Q. Suppose he refuses to sign a new contract with a new reserve clause in it, what happens to him then? Suppose his salary is satisfactory, but he does not want the new reserve clause? A. I assume he would have to sign the contract that the club presented him with.

325 Q. He would have a reserve clause in it, of course? A. Not necessarily.

Q. Do not the rules so provide? Isn't that mandatory? A. There is a conflict. The rules provide that, but the contract does not.

Q. The rules do provide for that? A. The rules provide that no unreserved contract shall be entered into, yes, without special per-

mission from the National Commission or the National Association.

Q. That no other club in Organized Baseball would be in a position, under the rules of Organized Baseball, to contract with a man who had thus failed to agree with the club to which he was assigned or belonged—that applies to all of the leagues in the United States who are engaged in the business of professional baseball? A. All the leagues under the National Agreement, yes.

Q. Are there any outside? A. None that I know of. There may be some.

Q. You don't know of any? No man could make a livelihood in any decent way? A. I think there is one near Philadelphia here. I don't know what it amounts to.

Q. But practically there are none of any importance, are there, in the sense that those things are important? A. No, I should say not.

Guesses the number of players now in Organized Baseball is around 6,000. Understands a number of minor leagues have suspended within the last couple of years, which reduced the number of players from the normal number of about 10,000.

Witness further testified that he knows about the organization and expansion of the Federal League in a general way. There was competition with Organized Baseball during its existence, competing for players' services, for patronage, and for territory to a certain extent. Quite a number of members of Players' Fraternity joined the Federal League. Players' Fraternity included players in American and National Leagues and minor leagues of the AA and A classification. AA league ranks next to major league. There are
326 three AA leagues, the International, American Association, and Pacific Coast.

The number of players each club of major leagues may carry is controlled by National Agreement. This provides that each club carry 35 players except between the 15th of May witness thinks until some time in September and during that period they may carry 25 players each. But believes that that limit was reduced last season in both leagues. Thinks the American League limitation is 22 and National League 20 or 21. Usually four games played daily in each major league.

Schedule arranged so that each club shall play equal number of games at home and abroad. Traveling from city to city is essential, the expenses incident to which are paid by the clubs.

The witness further testified that "The members of our organization who went to the Federal League were automatically suspended", not expelled. Under by-laws of Players' Fraternity player who transferred from protected league to non-protected league was automatically suspended. Protected Leagues were the two major leagues, the three AA leagues and the two A leagues, all other leagues were non-protected leagues.

Witness was asked whether any request was made of him, as president of the Players' Fraternity, by any one or more of the members of the National Commission concerning the attitude which the Fraternity should take toward players who were performing in the Fed-

eral League, and he replied that requests were made of him by both sides; that on January 6th, 1914, the Fraternity having presented certain requests for revision in baseball legislation to the National Commission and to the National Board, a hearing was had in Cincinnati, and after what is known as the Fraternity Agreement had been practically decided upon, Mr. August Herrmann, chairman of the National Commission said:

327 "What are you gentlemen now going to do for us?", to which witness replied that he did not know there was anything they could do but to lift the ban on contract signing; that the players had agreed not to sign contracts until they were heard by the Commission on the subject of their requests; that then Mr. Herrmann asked them if they would not expel from the Fraternity all players who went to the Federal League; that witness told him they were not going to enter into the fight between Organized Baseball and the Federal League.

On cross examination the witness, in answer to the questions as to whether or not he was on record as favoring what is known as the reserve clause in baseball players' contracts, testified: "Not necessarily as favoring the reserve clause as it now exists, no. I do think that a form of reserve clause is absolutely necessary;" the object of which is to hold players from year to year, and its importance to Organized Baseball is that it prevents the player from being a free agent and engaging with another club. Thinks the principle of the reserve clause is necessary for the maintenance of baseball.

Witness supposes object of limiting the number of players was to reduce expenses. Does not think a rich club could get hold of 40 or 50 great players—not that many in existence. It is pretty hard to purchase a good player today and always has been. Restriction of number of players lessens the opportunity of one club obtaining all the good players.

Witness asked in regard to what rules prohibit a club from employing a player who had failed to agree with his own club, replied that there are quite a number of things there that bring about that effect and did not think that Organized Baseball for a minute contends that that is not the case. Thinks that it is accomplished by a number of rules any one of which would bring about the result, and he referred to Article VI, Sections 1, 2 and 3, of the National Agreement. That is the interpretation put upon that rule. When asked if there was anything to show that the defendants put upon

328 the rules in question the interpretation accorded them by witness, he replied that he did not think it could be said any more plainly than by the rules.

At the time of the interview in Cincinnati in 1914, when Mr. Herrmann made the request that Federal League players be expelled, witness was acquainted with Mr. Gilmore, but did not know Mr. Weeghman prior to that time and had never met Mr. Sinclair. Mr. Gilmore's request was that the Players' Fraternity allow players who went to the Federal League to remain in the organization as active members. At that time the Federal League was in active opposi-

tion to the American and National Leagues, and witness declined to take any part in that war. What actually happened was that players who went to the Federal League were automatically suspended, but we told Organized Baseball we would only expel players from our Fraternity who jumped their contracts.

Under the rules of Players' Fraternity, if a player jumped his contract he was given a hearing, and, if it were proved, he would be expelled. The request that Federal League Players be expelled did not hinge upon violation of their contracts.

Asked what witness meant by automatically suspended, he stated that: "We did not feel at the time we organized that we could protect all members of Organized Ball. That is, our machinery was not so perfected. We only felt that we would go the first year into the major classification, the second year into the AA, and the third year into A. So that we did not look upon leagues lower than A as protected leagues. We knew, however, that players would from time to time, who were members of our organization, go to these lower leagues. We did not want to expel them because they hadn't done anything to be expelled for, but we also thought that we were not in position to protect them." That while this by-law was made prior to the inception of the Federal League, yet it applied to the Federal League because it was a non protected league so far as the players' organization was concerned, and in order to protect the play-
329 ers in the Federal League, It would be necessary to change our by-laws, and this we were requested by the Federal League, but declined, to do.

Witness does not think Players' Fraternity ever made request for change in reserve clause.

On redirect examination the witness testified that Rule 20 of the National Commission is along the same general lines as sections 1, 2 and 3 of Article VI, already quoted, concerning the title to players; that an outlaw league or team is one not under the National Agreement;

Q. You were asked about the possibility of competition for services. When you spoke of there being some competition in the purchase of players, did you mean that there was competition for players or competition between the clubs for the purchase of players? A. There is competition for the right to do business with players.

That a player sold by one club to another does not necessarily derive any benefit, and he would have to go if sold; the selling club and not the player gets the purchase price; that stars like Collins sometimes or very often get commissions that other players cannot when sold; that a team which accumulated 30 or 40 of the very best players would probably win the pennant—there would be practically no competition; that this might pay for two months, but then people would tire of seeing team win; that neither Gilmore nor any other representative of the Federal League ever asked that players in Organized Baseball be expelled from the Players' Fraternity. Gilmore's

request was confined to obtaining protection for players in the Federal League.

Further to maintain the issue*d* on its part joined, the plaintiff offered and there was read in evidence the deposition taken in Philadelphia, in June, 1917, of JOSEPH VILA, who having been duly sworn testified on direct examination as follows:

That he is a sporting editor of the New York Evening Sun and has interviewed Mr. B. B. Johnson, president of the American League from time to time, reporting some of such interviews which were published. Also wrote articles for the Sporting News. On March 5, 1914, the Evening Sun reported an interview with Mr. Johnson where his statement is set forth "as nearly as I could quote it. Of course, I did not take it in shorthand, but I took it as nearly correctly as possible."

330 That the statement published in the Sun on March 6, was given by Mr. Johnson to everybody, including the witness, confirming the interview published the day previous; some of the other papers had tried to discredit this interview and Mr. Johnson confirmed it, that is all; that he has known Mr. Johnson about 25 years and he saw Mr. Johnson personally and Mr. Johnson knows that witness is in the newspaper business, and the interview was given to him as a newspaper man for publication.

The witness was then asked the following questions and gave the following answers:

Q. Did you after that interview reduce to writing the substance of the interview? A. Substantially, yes, sir.

Q. You gave it in quotation marks. Does that mean that you have put it particularly accurately? A. You generally write an interview in quotation marks. I rarely take any notes. I have talked to Mr. Johnson on various topics and I do not think I have shown a piece of paper in front of him. As long as I have known him, I have never written down any notes or used anything but my recollection, but I would talk in a general way to Mr. Johnson, as I would to any baseball man or any sporting man, and I would get the gist of their ideas or their opinions, and then I would reduce it in the form of an inter*i*ew. I might not use Mr. Johnson's exact words and I might misquote him. That is possible in the newspaper business. It is quite possible.

The following day met Mr. Johnson, who said that he had told other newspaper men that the interview was correct. Other newspaper men who had not got this story—this interview—went to Mr. Johnson and asked him if it were true and Mr. Johnson told witness that he had told them that it was correct. Did not go to Mr. Johnson to have him confirm article, because he knew it was reason-

331 ably correct. Having scored a big *big* baseball beat, the Evening Sun printed the short statement that the interview was correct. "That was a boost for ourselves." It was printed in

the last three editions of his own paper in New York City, but he does not know whether it was published in any other papers.

Upon cross-examination to determine whether the article was in fact admissible as a publication authorized by the defendants, the witness stated he could not swear to the circumstances under which the interview was held or where it took place; that it might have been while walking or riding from the station to the hotel; that Mr. Johnson made certain statements to witness of which made no contemporary note. Asked in regard to the language used in the interview as published, as to the chances that it was Mr. Johnson's language, or the witness' general recollection of the substance of what he said, the witness answered:

A. Well, I should say, to use the slang expression, about fifty-fifty. As I testified before, Mr. Pepper, I could not swear that this is Mr. Johnson's language word for word, because there was nothing to go by. After I wrote this interview, maybe two or three hours after I had seen him,—I saw him, as I remember it, at 9:30 in the morning and I did not attempt to write this until about one or two o'clock in the afternoon, and then it was, as I remember it, dictated to a telegraph operator at one of the hotels, and sent over the wire to the office. So that there was really no copy written by me in which—there was no copy of this story for the type-setter, except that which was produced by the telegraph operator in the Evening Sun office. This story was dictated to the telegraph operator, as I recollect it, in the Waldorf, or one of those hotels, as I am in the habit of writing stories that way.

Witness had received a telegram from New York Sun's Chicago Bureau that Mr. Johnson was leaving Chicago, and not from Mr. Johnson. Mr. Johnson has never sought an interview with the New York Sun. Witness has always sought Mr. Johnson as he is a public character and has always figured he could get something from
332 him of interest to the public.

Upon further direct examination, the witness stated that Comiskey and a number of ball players were due to arrive the morning following his interview from a trip around the world.

That he wrote the article shown to him, which appeared in Sporting News on May 13, 1915, under "Peace Romances." This magazine is published in St. Louis. Could not say that the part in quotation were the exact words of Mr. Johnson. It was a weekly letter. Cannot swear that Mr. Johnson made the statement to him. Used to write those letters, "and it is a little joke every week, a lot of slamming and cunning, and entirely different from daily newspaper work." "I might put things in there and quote somebody without ever talking to them, with the idea, of course, that that was the trend of his opinion and that is what he would say, or what he had said at various times."

Witness cannot swear that article thereupon shown to him in Sporting Life of July 3, 1915, was written by him. His signature is over it, but he has not written for that paper since 1894. "It might be anybody's stuff." "I protested a number of times to Mr.

Richter about using my name in his paper, but he and I are old friends, and it has always been a joke."

On cross-examination the witness testified that the cases of Killefer and Seaton, mentioned in the Evening Sun article, referred to men who were players with the Philadelphia National League Club in 1913. They were written up in all the papers as contract jumpers. It was charged that they had accepted terms with the Philadelphia National League Club and thereafter had signed with the Federal League in violation of the reserve clause. "But when a player accepted terms from a club owner, it was regarded in baseball and among newspaper writers as a binding agreement, that is, whether he did it by word of mouth or by a telegram or by a signed agreement." The Killefer case came into Court and he was re-
333 turned to the Philadelphia Club. "That was the topic, the live topic at the time, which was of interest to the public, and naturally these gentlemen, the National League and American League men were greatly concerned over the right to hold these players by accepting terms or by reserve clause or something, and it was simply a live topic, and they were to get together, and as I remember it, discuss these two cases." Seaton was a pitcher on the Phillies and Killefer their great catcher.

Thereupon, after counsel for the defendants had stated that the objection to the introduction in evidence of the interview with Mr. Johnson, appearing in the New York Eve-ing Sun of March 5, 1914, because there was not laid sufficient foundation of the document being a reproduction of Mr. Johnson's remarks, was improvidently made and therefore would not be pressed, the plaintiff offered in evidence a copy of said interview appearing in the New York Evening Sun of March 5, 1914, which was identified by the witness, to which offer counsel for defendants then and there objected because the article offered was as probative proof of the averment in the declaration which charges a conspiracy by some of the defendants against other defendants who could not possibly have been parties to such conspiracy, and also because the article does not refer to the plaintiff club, but to the Federal League, a corporation in which it was a stockholder. In addition thereto, counsel for defendants moved the Court to strike out so much of the declaration as appears on page 22 thereof on the ground of duplicity and inconsistency with the averments appearing on subsequent pages thereof, stating that if such motion were granted the offer of the Villa interview would necessarily fall, because there would be no allegation respecting which it would be probative. Said page 22 of the declaration reads as follows:

"That immediately upon the entry of said The Federal League into the business of baseball, the defendants, representing organized baseball as an entirety, and particularly the defendants, Herrmann, Johnson and Tener, contracted, combined or conspired together, in violation of the statutes aforesaid and the common law, to injure or
334 destroy the business of the said The Federal League, and of its constituent members, and to monopolize, or attempt to monopolize, all or a part of the trade or commerce in base-

ball among the several States, and repeatedly announced publicly and privately, through the press and to individual players considering entering into contracts with the constituent members of the Federal League, that the said League and its constituent members were financially irresponsible and would not be able to perform their contracts, and would not be able to continue in the business for such length of time as to enable them to play out their schedules of games as a League of major importance; and the said defendants, or some of them, likewise threatened that any player who was or had ever been a member of any club in Organized Baseball, who should contract with any of the constituent members of The Federal League, including the plaintiff, should thereafter be barred from ever playing in Organized Baseball; that each and every of said statements, and each and every of said threats were made for the purpose of harassing and injuring the plaintiff and other constituent members of The Federal League, and for the further purpose of deterring the players within the combination of Organized Baseball from, at any time or under any circumstances, entering into contracts with the plaintiff, or any other of the constituent members of the said The Federal League; and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of The Federal League, and for the purpose, if possible, by such means of destroying the said The Federal League, and ruining its constituent members and thereby eliminating competition with said organized baseball."

Whereupon the court overruled the motion to strike out, and also overruled the objection to the offer of proof, to which rulings the defendants then and there separately excepted, and the same were noted upon the minutes of the court.

The Court at the time of making these rulings stating: "The Court will give careful attention to the question of the use that may be made of this testimony at the close of the trial, after hear-
335 ing the suggestions of counsel as to what use, if any, may be made of it, I will reserve that question."

The article referred to was thereupon received in evidence, and reads as follows:

While magnates of the National and Federal Leagues were taking lunch at the Waldorf-Astoria today, Ban Johnson, President of the American League, asked The Evening Sun to say that he would not countenance peace negotiations and that he intended to carry the fight against the new baseball circuit to a finish.

Johnson, who was seen at the Biltmore Hotel, declared war against the Federal Leaguers in forcible terms. He cut loose when he heard that James A. Gilmore, president of the Federals, and his attorney, E. E. Gates of Indianapolis, were talking over the situation with James E. Gaffney, of the Boston Nationals, and former Police Commissioner W. F. Baker, owner of the Phillies.

"I don't favor these confabs," said Big Ban. "If the idea is to bring about a peaceful settlement of the present trouble in baseball the American League will put a stop to all negotiations. There can be no peace until the Federal League has been exterminated. Put

it just as strongly as you can that we will fight these pirates to a finish. There will be no quarter.

"Yes, I've heard that peacemakers are at work, but they are wasting their time. The American League will tolerate no such interference. We have come here to greet Comiskey, McGraw and the World's tourists, and we will refuse to take part in any peace confabs.

"This Federal League movement is taken too seriously, why, the whole thing is a joke. They are holding a meeting once a week to keep from falling to pieces. Quote me as saying that the Federals have no money in Buffalo, Indianapolis, and Pittsburgh. They have no ball parks in any of their cities, except an amateur field in Kansas City and a ramshackle affair in Pittsburgh. There are some wooden bleachers put up on Hanlon's Park in Baltimore, I believe.

336 "We hear from day to day that the Feds have millions behind them. If that is true they ought to build half million dollar stadium in a few weeks. But getting down to brass tacks, they have neither grounds nor players that amount to anything.

"When the list of players is finally announced the base ball public will realize what a bluff these fellows have been putting up. They have many unknown players, taken off the lots and a bunch of Bush Leaguers with a sprinkling of big fellows. But the American League will lose not more than ten men.

"Blanding has gone back to the Clevelands. Yes, it is true that he was induced to sign with the Federals first, but he belonged to Somers, and we will take his case to the Courts. We are going to cut and slash right and left from now on. We intend to show up the four flushers and the bluffers in the proper light.

"I haven't answered Gilmore's telegram relating to tampering with players. I do not intend to answer it. Gilmore knows little or nothing about baseball, so why waste time over him? If the National League sells the Club to Weeghman and the Cardinals to Stifel that will not concern me. I know nothing about it, but I doubt very much if Weeghman would be willing to put up much money. Just say in The Evening Sun once more that we are going to fight the Federals until they have been counted out."

The plaintiff further to maintain the issues on its part joined, called as a witness in its behalf Robert Garrett, who being first duly sworn, testified on direct examination as follows:

That he is head of the banking firm of Robert Garrett & Sons, in Baltimore, and stockholder in Baltimore club. Subscribed when organized in 1914 or 1913 for $1,400 of stock at $10 a share. Witness was asked to state whether there was a popular demand at the time for major league baseball in Baltimore, and witness said there was very strong sentiment in favor of it. In years gone by had very strong team in Baltimore. Citizens were interested and when

337 Federal League was formed many hoped old traditions would come back and first class baseball would be permanent thing. When Federal club started there was large attendance, and witness thinks it was very popular. Witness is very much interested in

popular athletics. Is president of the Public Athletic League which has games in the Public Parks and all throughout the State.

On cross-examination the witness testified that he is not an officer or director of Baltimore club. Attended games because of his general interest and of his special interest as stockholder. Did not attend regularly and did not go frequently. Cannot recall how many times, possibly less than half a dozen in two years. Gauged attendance by people whom he met who were interested, and read the papers. There was good attendance and great interest up to the very end so far as he is aware. Cannot answer absolutely that early promise of opening game was maintained. Does not know that attendance steadily decreased. Knows a good baseball game when he sees it. Cannot state what sort of team played in the second year. Believes it was a good team right through the first and second years. Does not recall which year he saw the games. Does not recall whether he attended the opening game, and does not know who the players or batteries were during the two years.

The plaintiff, further to maintain the issues on its part joined called as a witness in its behalf CARROL W. RASIN, who being first duly sworn, testified on direct examination as follows:

That he lives in Baltimore and for the last few years has been interested in Baseball. Was president and stock-holder of the plaintiff club, and subscribed for stock at the organization. Stock was taken by popular subscription, but at first "six or seven of us underwrote thirty or thirty-five thousand dollars of it"—agreed to take it if the public did not. The stock was placed in Baltimore and around Maryland. For some years ever since the old Baltimore team
338 there has been a popular demand for major league ball in Baltimore. Baltimore had been without major league baseball for about twelve years. At the time the Baltimore club was started Mr. Goldman called and said he could get a franchise in the Federal League, that he thought it would be a means of bringing major league ball back to the city, that it was an independent organization, and it was largely through Mr. Goldman and Mr. Frank Kent, manager and editor of the Baltimore Sun, that witness became interested. Club operated two years, but did not play after season of 1915.

The witness further testified that he had no knowledge of the making of the agreement of December 13, 1915, prior to its being made, nor had he any knowledge of its being contemplated. Had seen a lot of newspaper talk about a week before he was called to New York by Gilmore, and had telephoned and asked Gilmore if there was any truth in it, and he said there was not, that it was all newspaper talk. There was never any meeting of the directors or stockholders of the Baltimore club or executive committee at which any one was authorizen to negotiate on behalf of the Baltimore baseball club with organized baseball for a major league franchise or anything else.

On cross examination the witness testified that a telegram was received by him from Gilmore on December 16, 1915, and said for him and Hanlon to be in New York the following morning. Hanlon

was a director of the club and lessor of the property on which the club played. Witness went to New York with Mr. Janney. Mr. Hanlon was in New York, but witness does not recall whether he went with him. Janney was attorney of the club and a director.

That upon first arriving in New York witness asked Gilmore the purpose of the telegram, and if his recollection is correct there were one or two present and Gilmore refused to talk except to him alone, and took him to his room, where he told him that he and the other associates of the Federal League had decided to quit, that they had made arrangements with Organized Baseball. Witness asked
339 him what provision had been made for Baltimore, and he said none, as no one had authority to act for Baltimore, witness told him at that conference that they would not stand for it; that "then he gave me, as I remember, on a piece of paper, a little sketch of an agreement that he said they had agreed to." Thinks he said they agreed to give Weeghman $50,000 and the privilege of purchasing a club, had given Gwinner $50,000 in Pittsburgh, and Ball $50,000 with the privilege of buying an American League franchise. Gilmore, witness is positive, did not tell him about the Wards. This was at an interview between witness and Gilmore alone at his room in the Biltmore.

The witness further testified that when he stated on direct examination that he did not know anything about the so-called peace agreement, he meant prior to the interview that he has just mentioned.

That after this talk there was a conference, but not a meeting. "Gilmore tried to get us into a meeting which was not regularly called." At this conference were present Gilmore and Sinclair and there might have been one other. Thinks there was a representative of the Ward estate. This was in one of the private dining rooms of the Biltmore, and Janney, Hanlon and witness were present. It was just a conference. Is not sure of the date, but it was the day he arrived,—during the same day in the evening of which there subsequently took place a conference at the Waldorf. Thinks December 17 is the date. It was held after lunch, in the afternoon, a few minutes prior to the time Weeghman, Sinclair and Gilmore were to meet the representatives of Organized Baseball. Remembers this distinctly because "we held them up, and we had quite a heated conference." They were trying to adjourn it so they could go down to meet the representatives of Organized Baseball.

Witness' first conference with Gilmore had taken place as soon as he arrived and after that witness had another conference with Janney.

Thereupon counsel for defendants stated that he had what purported to be the minutes of the meeting of the board of
340 managers of the Federal League at the Biltmore Hotel in New York on December 17, 1915, and asked witness if it was not more of a meeting than he first indicated, to which witness replied that it was not a meeting; that Weeghman was there and he was a member of the board of managers representing Chicago; that there were only three or four representatives there;

that the board of managers of the Federal League is made up, representatives of constituent clubs; that Chicago's representative w Mr. Weeghman; and witness was Baltimore's representative on t Board of Managers of The Federal League of Professional Basel Clubs. Does not recall that Comstock was representative of the Pi burgh club on the Board of Managers. knows he was in New Yo Conference became quite heated, and after a few minutes witness not pay much attention to who was there. Thinks Mr. Gwyner w representative of Pittsburgh. It might have been Mr. Comstock, witness thinks Mr. Gwyner generally was. Both of them genera attended the meetings. There is no doubt about Mr. Comstoc being there at the Biltmore. Mr. W. B. Ward was present at conference. He represented the Ward interests. Sinclair was th Does not know about him representing St. Louis. Supposes he re sented Newark, because his interests were there. No minutes w taken; in addition to those already mentioned Janney and Han and witness were present. Witness does not remember that st ment was made by Mr. Gilmore respecting a previous tentat agreement. Gilmore had told him at the first talk that they had and made a settlement. Gilmore did not show him a little me randum. "He told me they had made arrangements with Wee man and Ball and Gwyner. He told me they were going to t care of the Wards in some manner." Gilmore had not shown ness tentative agreement. Just told him the contents and did not him contents about the Wards or Newark club. Does not remem that Gilmore sketched it on paper. Did not mean Gilmore had m note on paper for him.

341 Gilmore had not told him fully about the tentative ag ment in the morning. It was at the afternoon meeting th came out what they were to give to the Wards. Is not sure that Gilmore read the document at the afternoon meeting or stated contents more explicitly. "When we went there it was quite evi that Baltimore was blockading or worrying our associates bec they had not been taken in." It was a conference—not a meetin in the afternoon and immediately upon our entry into the room question came up about Baltimore and what provision had b made, and Janney, Sinclair, witness and Hanlon joined in a he discussion. Lot of ugly words passed. "They wanted us to agre the tentative agreement," which witness understood was final ag ment, and "we would not do it." The tentative agreement was subject of discussion at this meeting. It is not a fact that wit proposed the appointment of a committee of three to confer representatives of Organized Baseball, at the Waldorf that even

Q. Don't you remember that when that proposal was made, if by you by somebody, that Mr. Sinclair declined to be a membe any such committee or conference unless the committee was g full power to accept or decline any proposition that might be mitted? A. I remember that, yes."

Q. So that prior to his making that statement the proposal been made by somebody that there should be a committee with power? A. No, may I explain.

Witness explained that Organized Baseball was waiting then—it was three or four o'clock in the afternoon—and they wanted us to agree to it, and we would not agree, and Sinclair refused to go into a meeting unless he had authority to act, and Janney and witness both said he would never go then with authority. Sinclair did in fact decline to be a member of the committee unless it was given
342 power to act for the Federal League. No one had previously proposed that there should be a committee of conference. When witness arrived in New York he found all had been taken care of except Baltimore, and he went to Sinclair, Weeghman and Gilmore and asked as long as those had been taken care of he would like to go on the committee to see what proposition he could get from Organized Baseball "to take back home." None of them would agree to do it.

The committee was never given power to act. It was not a meeting, but a fist fight. That is about all it was. "I do not remember anything, and as far as them having any minutes of a meeting, it is laughable." There was no such thing as a "business-like conducted meeting." Witness cannot tell what was the next thing after Sinclair made his statement that he would not be a member of the committee unless it was given power to act. Witness absolutely did not move that committee of three be given power to act. A committee of three was not thereupon appointed. Does not recall that Sinclair, Weeghman and Gilmore arose and withdrew from the meeting, conference or fist fight and headed for the place where the representatives of Organized Baseball were meeting. Does not recall their leaving one meeting to go to the other. They never invited witness to go—the conference with Organized Baseball, "because I butted myself in on them. I was a very unwelcome guest." "I don't think we went direct from the meeting."

"Q. I want to inquire whether at a certain time it is not true that you gained knowledge of the fact that Sinclair, Weeghman and Gilmore were either directly or by and indirect route to go from where you were then in session to a meeting where the representatives of Organized Baseball were in session, and that you planted yourself in on that little group? "A. Oh, yes, I went with them."

The witness further testified that Mr. Janney was not invited to go with them. "I went with Weeghman, Sinclair and Gil-
343 more." That Janney subsequently turned up at the meeting at the Waldorf, where were present, in addition to the representatives of Organized Baseball, Gilmore, Weeghman, Sinclair, Rasin and Janney—persons connected with the Federal League. Witness was asked if Sinclair in his hearing had withdrawn the statement that he had previously made that he would refuse to be a member of a committee unless the committee was given power, and he replied that he did not recall.

344 The witness further testified that between the meeting, conference or fist fight at the Biltmore and the meeting at the Waldorf, Hanlon and witness called on Herrmann. Denies that

witness told Herrmann that a Federal League committee had been appointed with power to conclude an arrangement with Organized Baseball. Witness went to Herrmann to see what chance there was of Baltimore securing by purchase a franchise in Organized Baseball. Means by Baltimore the city of Baltimore.

Hanlon and witness told Mr. Herrmann they had arrived that morning and found their associates had quit and made a peace with Organized Baseball and had left Baltimore in the lurch, and that they were not going to stand for it; that witness came over to see what chance there was for Baltimore to secure a major league franchise.

Witness was asked if in stating that associates had quit and left Baltimore in the lurch he meant that cities of Newark, Pittsburgh and Brooklyn had quit and left Baltimore in the lurch, and he replied that he meant that owners of the clubs had made peace and sold out to Organized Baseball and left the Baltimore Club in the lurch. That in order to escape from the position in which they found themselves it was their desire to get a major league franchise, but not for the Baltimore Federal League club. That club was in no position to purchase a franchise. Baltimore club was on sound financial basis—that is, if they had continued. Witness had no authority to offer to purchase franchise for Baltimore Federal League. He was president of the club. Went over to see what he could save from the wreck and to try to get a proposition to see "if we could not take care of our stockholders in some manner." What he was doing on the franchise end was not really for the benefit of the stockholders.

As to major league franchise, possibly had in mind that if
345 they did secure it they could take care of some of the stockholders, in some way means that it could be worked out in some way. Would have treated all stockholders alike. Was not seeking to save anything in the way of a franchise from the wreck for the benefit of the Baltimore stockholders. Baltimore club was in no position at that time to pay three to five hundred thousand dollars for a franchise. Knew he could finance it with others and probably had in mind "that if I could secure it we could take care of the stockholders in some way."

That individually, but not for the Baltimore club, he could have raised additional capital in order to get the franchise.

The Witness further testified that Mr. Herrmann assured him and Hanlon that Baltimore would receive fair treatment. Herrmann and Hanlon talked over old times. He agreed to see what could be done about the franchise. Witness wanted franchise for Baltimore. Made himself clear to Mr. Herrmann. Then he said he would see what could be done about it.

Following this interview with Herrmann witness joined Weegham, Sinclair and Gilmore at session of Organized Baseball at Waldorf. That the meeting was quite largely attended. Forty or fifty people were there. Remembers that proceedings were taken down stenographically. Whatever was said by those presetn was said with knowledge it was being reported.

Meeting was opened by statement of Mr. Herrmann who was acting as chairman. Does not remember what the statement was.

The witness further testified that he has stated that no authority had been given by stockholders, directors or executive committee of the Baltimore Club to anyone to negotiate with Organized Baseball, either for a major league franchise or anything else, and also
346 that on the evening of December 17, 1915, he was present at a conference with Organized Baseball at the Waldorf Astoria. He was then asked whether at that evening meeting on the 17th anyone in his hearing stated that the committee of the Federal League, consisting of Gilmore, Weeghman and Sinclair, had full authority to negotiate with Organized Baseball for a major league franchise and also for a peace agreement, to which question counsel for plaintiff objected. The objection was by the Court sustained, and an exception noted.

Witness was then again referred to what he had said about the absence of authority to commit the Baltimore Club and was asked whether he recalled that at the conference in question Janney was introduced by Mr. Herrmann with the following statement: "Mr. Sinclair has informed me that there is a representative from the Baltimore Federal League Club that would like to be heard," to which question counsel for plaintiff objected. The objection was by the Court sustained and an exception noted.

The witness further testified that on December 17, 1915, he was president of the plaintiff club; that he was such president at the time of bringing this suit and was the only president the club ever had.

Q. Did you take responsibility as president for the averments in the declaration? Was this declaration submitted to you before it was filed? I mean the statement of the plaintiff's claim, or cause of action.

Mr. Marbury: That is hardly cross examination.

Mr. Pepper: I think so.

The Court: It may be if there is anything in it inconsistent with his statement.

Mr. Marbury: I don't remember anything.

The Court: There is no harm for him to be asked that.

347 The Witness: Would you mind repeating that question?

(The pending question was repeated by the reporter, as above recorded.)

The Witness: I think I saw it.

By Mr. Pepper:

Q. I will hand you a copy of the declaration and direct your particular attention to the paragraph appearing on page 23. I ask you to glance over it and tell us whether the averments therein contained correctly represented your understanding of the facts. The following portion of the declaration was then read to the witness.

"That on or about the 5th day of January, in the year 1915, The Federal League of Professional Baseball Clubs, of which the Plaintiff was and is a constituent member, brought its Bill of Complaint in the United States District Court for the Northern District of Illinois, Eastern Division, setting out substantially the matters and facts hereinabove set forth, and praying an injunction against the further prosecution of the illegal acts of the defendants herein and all of them, and for other relief as to equity should seem meet. And said Bill of Complaint was at the time of the events hereinafter detailed, still pending, but has since been dismissed with the consent of the parties thereto, the right of this Plaintiff to bring this action for damages having been expressly reserved by Order of the Court granting said dismissal. And, thereafter, and while said Bill of Complaint aforesaid, was pending, the said Defendants out of the moneys acquired by said organizations by the illegal practices hereinabove set forth, have actually bought the assets of certain of the constituent members of The Federal League of Professional Baseball Clubs for the purpose of controlling them and stopping them from engaging in the business of professional baseball, and the said
Defendants have succeeded in their illegal scheme and con-
348 spiracy, and contrary to the Anti-trust Statutes of the United
States have removed them from further participation in said competition with the said defendants; and, by means of persuasion and cash contributions, have induced other members of the said Federal League to enter said conspiracy, and to become parties to said National Agreement, and to acquire Franchises in said American or National League."

Mr. Marbury: Don't answer that, Mr. Rasin, until we have a chance to object. Read it and see what it is first.

That is not cross examination.

By Mr. Pepper:

Q. You can answer the question.

Mr. Marbury: That is objected to as not cross examination.

The Court: I will hear you.

Mr. Pepper: Why, sir, I had supposed that when the president of the plaintiff corporation is on the stand that it is proper cross-examination as matter affecting his credibility as a witness to interrogate him respecting the averments in the statements of claim and then to follow by a question whether or not such and such facts inconsistent with the averments were not true. I have a right to test his credibility, and if I may ask him whether he stands good for the averments in this declaration as filed, I may follow that by a question whether or not he did not know at the time that the declaration was filed that the fact was to the contrary of what was therein stated.

The Court: What has he said about his knowledge of this declaration, Mr. Reporter?

(The Reporter read as follows:)

"A. I think I saw it."

The Court: The question may be excluded, and an exception noted.

Mr. Pepper: May the record show that the witness has read the declaration in question, or the part to which reference has been made.

The Court: Yes, the first paragraph on page 23.

349 Mr. Pepper: With your Honor's permission may I ask the witness this question, whether the statement as filed represents the position taken by the Baltimore Club at that date, to the knowledge of you, the president?

Mr. Marbury: The same objection.

The Court. I think I will exclude that. The legal effect of it is just what the law gives it, a declaration filed by counsel. If you want to ask him whether there are any statements of fact in that that were called to his attention so that he knew about those matters of fact being embraced in the declaration, and assented to them, I think you might have a right to do that.

By Mr. Pepper:

Q. Mr. Rasin, referring again to the language of the declaration I inquire whether when this declaration was seen by you, at or about the time that it was filed, you noted the averments that while a certain bill of complaint was pending the defendants succeeded in an illegal scheme and conspiracy to remove your competitors from participation in the competition, by means of persuasion, and so forth.

The Court: Did you note that averment?

By Mr. Pepper:

Q. Did you note that at the time that the declaration was filed?

A. May I have the stenographer read that question?

Mr. Pepper: Certainly.

(The pending question was read by the reporter, as above recorded.)

The Witness: As I said, I thought I had seen the declaration, and if I saw it I noted it.

The Court: Don't you notice what the question is, whether your attention was called to it, and whether you took notice of that particular averment. That is what he asked you.

The Witness: No, I cannot say that I did. I am not sure that I saw the declaration. I told you that, but I thought I had.

350 If I read it, I mean, I certainly saw it.

By Mr. Pepper:

Q. Now that your attention has been called to it will you state whether or not the averment that I have just summarized to you represents your understanding of the fact?

(The witness made answer.)

Mr. Douglas: We object:

The Court: Do you wish to have the answer stricken out?

Mr. Marbury: I think so. It is totally immaterial.

The Court: Of course he answered before he understood there was objection.

Mr. Marbury: I am quite willing it should be treated——

The Court: The reporter will treat it as not answered, and strike out the answer for the time being. My best judgment is that it is not admissible, that he cannot be asked that now. According to that every allegation in this declaration could be gone over and he could be asked as to his present understanding as to these matters and cross examined about them, while he is offered as a witness as to only two or three particular matters. I think I will hold he cannot be asked that question. An exception may be noted.

The plaintiff further to maintain the issues on its part joined called as a witness in its behalf PHILLIP L. POE, who being first duly sworn, testified on direct examination as follows:

That he is in the banking and brokerage business in Baltimore city.

351 Was interested in Plaintiff club and after its organization became stockholder and director. There was a decided demand for major league ball in Baltimore.

Goldman came to witness several years before organization of Federal League and planned to form United States League. Told him at that time he would not be interested in it because he did not think it was strong enough to satisfy the desire of Baltimore. Town was not satisfied with minor league baseball.

Witness didn't attend, and does not know of, any meeting of directors or stockholders or executive committee at which any one was authorized to conduct negotiations for major league franchise in Organized Baseball, or to represent the Club in any way to negotiate with Organized Baseball for a settlement of the controversy. Thinks he attended directors' meetings regularly. Does not recall attending stockholders' meetings.

On cross examination the witness testified that he does not recall stockholders' meeting at which Rasin submitted his report as president; that it is hard to keep track of all meetings witness attends.

There were ten or twelve directors, and witness discharged the duties of a director. Thinks he was on finance committee, which was fairly active. The active men in the management of the affairs of the club between the meetings were Rasin and Goldman, president and secretary. Thinks Baltimore supported club very well. First season went quite well. Second season attendance was not so good. Attendance gradually fell off. Club was down near the bottom, and was last at one time.

On redirect examination the witness testified that Baltimore Club was last because the other clubs had better teams, and because Baltimore could not get any players. Popular interest depends on calibre of ball produced and position in the league.

On recross examination the witness testified that he cannot
352 state whether Baltimore had more difficulty in getting players than other Federal League clubs. There were several players in contemplation that Baltimore could not get, his understanding being that at that time they were tied up by Organized Baseball, and could not come to the Federal League. Other Federal League teams had better players than Baltimore, which is evident from its position in the league.

On re-redirect examination the witness testified that first year Baltimore stayed pretty near the top well throughout the season.

The plaintiff further to maintain the issues of its part joined called as a witness in its behalf FRANK D. WEBB, who being first duly sworn, testified on direct examination as follows:

That he is, and has been since April, 1909, advertising manager for Baltimore News; that he remembers organization of Baltimore Federal League club in 1914; that there was widespread demand for major league ball in Baltimore. The interest spread among people who were not especially interested in baseball, because they thought it would be a good thing for the town. Witness was a stockholder in the Baltimore club to the extent of $100, he thought.

On cross examination, the witness testified that part of widespread desire was because it was thought to be a good thing for the town.

The plaintiff, further to maintain the issues on its part joined, called as a witness on its behalf LEONARD H. WEIL, who being first duly sworn, testified on direct examination as follows:

That he has always resided in Baltimore and is stockholder in the plaintiff club to the extent of several thousand dollars in cash money; that he thought major league ball would be wonderfully big thing for the city, and thought city was deserving; otherwise he would not have put up one cent. "I did it with that thing in view." And this feeling was prevalent among the people in Baltimore with whom witness came in contact.

353 The plaintiff, further to maintain the issues on its part joined, called as a witness in its behalf HARRY W. NEEPIER, who being first duly sworn, testified on direct examination as follows:

That he is connected with the firm of J. S. Wilson, Jr., & Company, bankers and brokers, and was interested in trying to get a team for Baltimore, "a team that would help to advertise the city. There seemed to be a tremendous demand for it." Witness helped to sell some of the stock of the company. It was sold in lots of from 1 to 100 shares at $10 a share.

On cross examination, the witness testified that in the sale of stock he found a fairly good response on the part of people who wanted to help boom the town.

The plaintiff further to maintain the issues on its part joined called as a witness on its behalf LEONARD H. WEIL, who being first duly sworn testified on direct examination as follows:

That he has lived in Baltimore for forty years and is very much interested in baseball. Played baseball until he became a "has-been." Was stockholder in Baltimore club, but not director. Had ten shares. Public was hungry for major league baseball. Baltimore was a major city of the United States and had big baseball years ago. City was growing, and there was no question about a very general demand for big baseball. Success from financial standpoint of baseball club is decidedly dependent upon character of players. Bigger attendance will be secured by players of known success.

On cross examination, the witness testified that he remembers second playing season of Baltimore Club. They were playing very fair ball, but other teams were playing better. They were last during most of the time. Did not play first class major league ball. Asked whether in order to build up a major league team for Baltimore it was not necessary to obtain players of major league calibre from
354 some other city or club where they were playing, the witness answered: "Not absolutely. There are undiscovered stars in the baseball firmament. It is not necessary to have major league baseball, necessarily, but usually that is the source of supply"; that it is necessary to have developed players, not necessarily players that are known; that a player may demonstrate his ability in the course of a very few days, but that he does not remember that Baltimore had any such undiscovered talent; that there were some disappointments in the players secured. Some were successes. Some of the players were well known and earned their salaries and others did not. Asked if it was not a fact that the Baltimore players were highly advertised and highly paid, but not in reality the best, and that the outlay for their salaries became largely a useless expense, the witness answered that he would hardly term it useless. Some games were not so well patronized as others; interest waned possibly because Organized Baseball was attacking it. Supposes attendance in Baltimore was as large as in the Philadelphia Athletics and possibly here in Washington, the same season. Thinks comparison would show that Baltimore was not much worse than some of the major league cities. Did not have knowledge of financial affairs of the Baltimore club during 1915. Did not attend stockholders' meetings. Possibly he was furnished with Rasin's report, but does not remember it.

On redirect examination witness was asked, how it would be possible for the Baltimore club to furnish better baseball as long as all the good players in the country were tied up by the reservation clause and witness replied it is a pretty hard proposition, it is going against a brick wall.

The plaintiff further to maintain the issues on its part joined called as a witness in its behalf HARRY BUSICK, who being first duly sworn testified on direct examination as follows:

That he has been a director of the plaintiff club since a month or so after its organization. There were seventeen or eighteen
355 directors. Subscribed for stock at the time of organization. Within the knowledge of witness, there has not been any meeting of the board of directors, or stockholders, or executive committee

of the Baltimore club at which anyone was authorized to represent the club for the purpose of negotiating with what is known as Organized Ball, for any settlement of their difficulties or any purchase by the Baltimore club of a franchise, as they call it, in Organized Baseball. No such power was ever to witness' knowledge given anybody to represent the club. At the time of the organization of plaintiff club, there was a popular demand or desire in Baltimore for major league baseball, which is the reason witness went into it—a civic reason. "That is the only way I was interested, the hotel business." Witness owns three hotels in Baltimore.

On cross examination, the witness testified that there were both regular and special meetings of the directors. Cannot say that meetings were held at stated intervals. They were called very frequently. Attended quite a number. Attended meetings at last once a month, maybe more. The officers were the active people in the actual management of the affairs of the club between meetings of the Board of Directors. They were the president, Mr. Rasin, the vice-president, whose name he does not recall, the secretary, the elder Mr. Goldman, Mr. Edwin Goldman was one of the attorneys.

Q. What knowledge if any was communicated to the board of directors by the President, Mr. Rasin of any meetings on conferences that he may have attended in connection with the negotiations with Organized Baseball? A. None.

Q. He made no report to you? A. He did not have any to our knowledge.

Q. I beg your pardon? A. We did not know of any negotiation whatever.

Asked who was the representative of the plaintiff club on
356 the Board of Managers of the Federal League—the central organization, the witness answered: "I don't know. What was the central organization? What is known as the central organization? I did not know it had any." Asked to give a sketch of the relationships and organization of the different clubs in the Federal League and their connection with the central body, the Federal League of Indiana, the witness answered: "That I don't know." That he could not answer as to whether plaintiff club was a stockholder in the Federal League. Was interested in the finances of the club more than in anything else, and seeing that the money was spent properly; made no investigation of the relation of the club to the Federal League. Didn't bother with that. "We had other directors interested in that who looked after that." Could not tell who was on the executive committee, it has been so long and so many things have happened since then. Cannot give an intelligent account of the organization of the club of which he was a director, because he was not interested in that. He was interested in the finances.

The plaintiff further to maintain the issues of its part joined called as a witness on its behalf JOHN J. FAHEY, who being first duly sworn testified on direct examination as follows:

That he has been a director of plaintiff club since shortly after its

organization, and is also a stockholder. Attended meetings of the Board of Directors, but may have missed one or two. There was no meeting of the directors, stockholders, or executive committee, at which anyone was authorized to negotiate on behalf of the Baltimore club with Organized Baseball. Witness is in the undertaking business.

There existed a general demand "for what they call major league baseball," at the time plaintiff club was organized.

On cross examination the witness testified that he does not remember being on the executive committee. Attended all
357 meetings by the Board of Directors.

If there was a meeting of the executive committee, supposes he attended. "I have been on the executive committee if there was such a committee appointed." Does not know who other members were. Does not remember whether there was an executive committee, and if so whether he was a member.

The plaintiff further to maintain the issues on its part joined called as a witness in its behalf OTTO G. SIMONSON, who being first duly sworn testified on direct examination as follows:

That he is an architect in Baltimore; subscribed to stock in plaintiff club and was a director since February, 1915. Attended meetings of the board of directors. There was never any meeting of the stockholders, directors or executive committee at which anyone was authorized to negotiate on behalf of the Baltimore baseball Club with so-called Organized Baseball.

On cross examination, the witness testified that he had detailed knowledge of the affairs of the club while he was on the Board, and followed its transactions with considerable care, that he was not familiar with the relationship between the plaintiff club and the Federal League, and never heard of the central Federal League organization. He does not know that the club had stock in any other corporation, and he had no knowledge that the club owed money to the other clubs. Understood there were relationships of various sorts with other members of the League. Left to the president the matter of attending to such other relationships, and those between the club and the Federal League. The president was Mr. Rasin, who was the active man in the management of the affairs of the concern. All matters pertaining to the club were brought before the regular directors' meetings, nearly all of which witness attended. Does not remember that anything ever came up respecting the relationship of the club to the Federal League, or the other clubs. Presumes
358 the president had charge of these relationships, if the questions did not come before the directors. Was not a member of the executive committee.

Understands they had an executive committee, a players' committee, that looked after the players, and there were always some few directors elected to cope with a certain situation that arose, whether it was financial or otherwise, and that was reported at the regular directors' meeting, "but to my knowledge there was no special executive committee that had charge of anything that you speak

of." Witness was on the committee charged with responsibility for buildings and grounds. Before he became a director he built a park for the club. This was in January, 1914. Individual directors were assigned to the work they were best fitted to do.

On re-direct examination the witness testified that the Baltimore club had pretty good grounds. Does not recall exact dimensions. It was the best locality obtainable—was very well located. The International League Park was on the opposite side of the street. Does not know whether any executive committee was ever created clothed with power to act on its own responsibility without the approval of the Board. All matters were brought before the regular meetings of the directors.

Mr. Pepper: Your Honor, Mr. Marbury will no doubt recall that he asked of several witnesses a very careful question as to what was or was not done by the executive committee, and I felt justified in assuming there was such a committee.

Mr. Marbury: I thought there was until I looked at the minutes. But it had no powers at all. Right in that connection, for the purpose of clearing it up, I would be glad to have the Court let me read from the minutes of the Board of Directors of the Baltimore Club held at the offices of the company, 250 Union Trust Building, Wednesday, October 20, 1915, at which this Mr. Simonson himself was present.

359 Mr. Pepper: May I interrupt long enough to inquire whether we may have a statement of the purpose, if the minutes are to be offered as a whole? I have no objection. If there is a statement of the reason, no doubt I shall have no objection to this extract. I would like to know what we are getting into.

Mr. Marbury: I hardly think we want to cumber the record by putting in all of these minutes. But any portion of them that counsel on the other side desire to be put in evidence we are willing to have admitted.

The Court: It is subject to their inspection, is it?

Mr. Marbury: Yes, sir. We only want to read the resolution which created the executive committee, and show you what kind of an executive committee we have been talking about.

Mr. Pepper: That is all right. You have got us into it, now get us out.

Mr. Marbury: I think we can do that easily enough. Those present at the meeting of the directors were C. W. Rasin, E. Hanlon, H. Goldman, G. Schleunes, L. E. Goldman, C. W. Smith, P. L. Poe, D. F. Mallory, H. Busick, O. G. Simonson, E. W. Poe, F. O. Cator, S. S. Janey, J. J. Fahey.

There was then read in evidence from the minutes of the meeting of the board of directors of the plaintiff corporation the following: "It was moved and seconded that the President and Mr. Janey be appointed to select a committee of five to act as the executive committee of the company. Adopted".

That is all that was ever done about the executive committee, and there was one meeting of the executive committee, and one only. It appears on page 113 of these minutes. Janey originally wanted it,

and they seemed to have selected themselves and two or three others, Rasin, Hanlon, Busick, Philip L. Poe and Janey. That has reference to borrowing some $50,000 on notes.

The plaintiff further to maintain the issues on its part joined, called as a witness on its behalf EDWARD HANLON, who being
360 first duly sworn testified on direct examination as follows:

That he is a citizen of Baltimore, where he has lived since 1892, and was one of the organizers of the plaintiff club; that he is one of the directors, and if there was an executive committee he was on that committee. He regularly attended meetings of the Board of Directors, and is a stockholder. There was no meeting of the executive committee, directors or stockholders at which anyone was authorized on behalf of the club to enter into negotiations with Organized Baseball.

Witness was at one time himself a baseball player of some ability. Began playing professional baseball in 1876, when he was 17 years old. First played with Providence, Rhode Island, where he remained a year, and then went to Fall River, Massachusetts, where he played a year, and then to Rochester, New York. Played at Rochester part of a season when the club disbanded, or the league disbanded. In 1878 went to Albany where he remained during 1878 and 1879. In 1880 went to Cleveland in the International League, and from there to Detroit in 1882, where he remained for seven years. Detroit took the place of Cincinnati which had dropped out of the League. In 1889 went from Detroit to Pittsburgh, where he remained three years. In 1892 went to Baltimore and remained seven years. In Baltimore was manager of the club. Was also a player in Baltimore. Had managed the Pittsburgh club for two years and a half. The Baltimore club was then called the Orioles and won three championships in 1894-5 and 6 and came second once. It was a major league club. Seven or eight men who came under his management are today managing clubs in the National League. Had ten per cent interest in the Orioles.

The Players League was organized about 1887, and he became a member of it. John M. Ward was the head of it. It was formed for the protection of the players' rights and interests. Asked what he
meant by players' right, and why such a league was neces-
361 sary or desirable, the witness answered: "Because they were supposed to have in the reservation a limit of $2000 salary and a classification of the players from A, 2, C and D down to E, $2,500 for the first, $2,250 for the second, $2,000, $1,750 and $1,500, classifying them down from A to E, and they objected to that very seriously." Organized Baseball objected "to paying more than $2,000. They had a $2,000 limit, and the players insisted on a special contract or making amendments to the present contract that was then in existence by Organized Ball." Asked if the players did not like the salaries which Organized Ball offered them why they could not go and get employment as players by someone else outside of Organized Ball, the witness answered: "There was not any place they could go. It was their profession, and they were under this

reservation, and consequently they could not go anywhere else." Asked whether for a period of ten years prior to the National Agreement there were any employers of professional baseball players except those included in what was known as the National League at that time, the witness answered: "There were lots of ball clubs that were not in the—I don't just remember when this National Agreement was."

In 1879 first reservation was created, and permitted five players to be reserved on each of eight clubs. In 1883 the number of reserved players increased from 5 to 11 or 12, in which year there was the tri-partite agreement between the American Association, the National League and the Western League. At that time they reserved fourteen men, and from then there were different organizations created, which gradually worked under the National Agreement.

American League started in 1890 or 1891. The National and American Leagues each had eight cities. Supposes the National Association had 35 or 40 minor leagues. Witness does not recall that at the time of the National Agreement, there were any employers of professional baseball players outside of these leagues. It was before the National Agreement that the number of re-
362 serve players was increased from 5 to 14. In the case of an old player on the reserve list, it meant that he had to play with that club, and he could not play with anybody under Organized Baseball without permission of the club in which he was reserved. This practice was continued by Organized Baseball. Witness has no knowledge that that system of reserving players has been abandoned by Organized Baseball.

From 1903 down to the organization of the Federal League Organized Baseball had no competitors that witness remembers in the business of professional baseball in the whole United States, that is furnishing exhibitions of professional baseball and employing players. If a man couldn't make terms with his club he couldn't play professional ball in the United States. Players are reserved for year after year.

Q. At the end of a man's term of employment, under the organized ball system, it is provided in these contracts that the club shall have a right to negotiate with him for employment for another year, or another season, upon terms to be agreed upon. Suppose they could not agree on terms, on a salary, for instance, for the next year? What was the situation then? What happened? A. He could not play professional baseball. If they did not agree on terms, he could not go anywhere else, could not play anywhere else under professional baseball.

Q. How long could he be kept in that situation without employment? A. For year after year.

Q. It would not prevent him from going to black-smithing or plowing or anything like that, would it? A. No, sir. If they put him on the reserve list, they could not agree on terms, and they did not see fit to sell him or exchange him to somebody else, they would renew this reservation year after year, continuously. That is what it means.

363 The witness further testified that he had ten per cent interest in the Brooklyn Club, and at different times had interest in other clubs. Had controlling interest in the International League franchise in Baltimore. Baltimore was formerly in the National League, and he was with that club for seven years. It remained in the National League until 1898 and he retained an interest in it up to the time the National League took over the franchise in 1899. Baltimore was in the National League in 1892. Won the National League pennant in 1894, 1895, 1896 and 1897. In 1899 witness went from Baltimore to Brooklyn. There wasn't any baseball in Baltimore in 1900. In 1901 the American League started as a major league, and played in Baltimore possibly a couple of years. Didn't have any major league ball in Baltimore after the American League stopped. Witness was in Brooklyn for seven years, after 1899, as manager of the club in which he had an interest. Then went to Cincinnati in the National League, which was owned by Herrmann and in which he had an interest. Remained in Cincinnati two years, and then retired from active management in the major leagues, and went back to Baltimore. Had a controlling interest in the Baltimore International League, which is a Class AA League. Has knowledge of prices paid for franchises in these leagues. The International League club was playing in Baltimore when he went back there. It was a corporation of which he became Vice-President, and continued such for about three years. Does not now have an interest in that club, having disposed of it ten or eleven years ago. Witness knows John Dunn, who is now the owner of it.

First became interested in the Federal League in the early part of 1914, and subscribed for stock in Baltimore Club. Was also a director and took active part in the affairs of the club. Served on players' committee which involved helping in the employment of players. Came in personal contact with players.

In regard to experience in valuing franchises, witness states
364 Dreyfuss, now president and owner of Pittsburgh Nationals, asked him twenty-two years ago for his advice as to what he thought about Pittsburgh franchise, the controlling interest of which he was thinking of buying. Witness told him it was a good ball town and had a great future. Considered then what the franchise was worth, and Dreyfuss consulted him on this question. In fixing the value of a franchise the things which influence his judgment are the league, the cities and the population. Mr. Tener, President of National League, asked witness what the Philadelphia Nationals were worth, and he gave him his opinion. Prices paid for franchises vary as the years roll on. It depends a great deal on just how well a club is playing, the cities and the attendance. Knows what prices have been paid for franchises from time to time, but when asked to give an idea of some of such prices said he could only guess in the rough. Mr. Tener consulted witness about six years ago. Witness asked John R. Taylor of Boston for a half interest in the American League ball club, and they agreed on the price, but purchase was not completed. Taylor was to let witness know whether the vote in the American League was favorable to such a purpose, and he never

heard from Mr. Taylor. Recollects taking part in the negotiations for the purchase of Boston National Club. Was negotiating with Mr. Russell. Baltimore was desirous of getting big league baseball at the time. Remembers having negotiations with respect to the Brooklyn Franchise. Told Mr. Ebbetts he would like to go back into baseball. Ebbetts put a valuation on the franchise and improvements, and it was more than witness could finance. Sold the International Franchise to Baltimore. Toronto, Montreal, Buffalo, Rochester, Providence, Jersey City, Newark and Baltimore then composed the International Circuit. The International League belonged to the association which was party to the national agreement of 1903, as did also 35 or 40 other minor leagues.

365 Witness is familiar with the properties owned by the Baltimore club at the time it ceased to do business at the end of 1915. Had purchased the property from the Brady estate and sold a part and leased a part. Leased the park to the Federal League, and it was later transferred to the International League. Has had a great deal of experience in real estate values in Baltimore. Was familiar with baseball in Baltimore at the time the Federal League stopped. When the Federal League organized, the people of Baltimore were very desirous of having major league baseball. "There wasn't any other way we could get it only to start out and try to run an independent league." Plaintiff acquired the ball park and put up the necessary buildings and equipment. The stand was concrete, wood and steel. Grand-stand accommodated about five thousand. Seating capacity of the rest of the stands was about 10,000. The stands were properly constructed and suitable for the purpose of a baseball club. Grounds had to be graded. Improvements cost about $85,000. It was also necessary to employ players. Witness was on the players' committee and conducted negotiations with players. Got players from Organized Ball. Had occasion to talk with several players, and they all gave witness to understand why they wanted contracts for three years, salaries as much as they were then receiving, and large bonuses, because they said they did not believe that when their contracts expired, if the Federal League should fail, that they would be taken back into Organized Ball. Gave Suggs twelve or fifteen hundred dollar bonus, and Wilhelm, five hundred dollar bonus.

Witness was asked if he had any difficulty in getting the kind of players Baltimore wanted, and he replied he had a similar experience in the days of the Players League; that at that time "they gave us to understand then that we would never get back into Organized Baseball if we left." When the Players League terminated part
366 of the agreement was that the players should go back. "A similar thing exists in this last movement, the Federal League." They got together some of them, threw down the Baltimore Club and agreed to take care of the players and they have all gone back again, most of them. "Any they saw fit to take have gone back."

Under the circumstances and conditions at the time of the peace agreement, December 13, 1915, the Baltimore franchise was worth

about $75,000, improvements about $100,000, and players about $30,000, aggregating $205,000. The estimate of $75,000 for the franchise assumes that the Federal League would continue, and that Organized Baseball would continue its policy of reservations. If players of Organized Baseball had been free to accept employment with the Federal League, if they had not been under reserve, the Baltimore franchise would have been more valuable, because then the Federal League would not have been required to give big contracts and bonuses. "If the market was open, of course I could get a better class of players." If the market had been open the franchise value would have been double $75,000. The franchise is not worth anything just now, its value is entirely destroyed. Does not know exactly what Baltimore invested in this enterprise. Cannot state how much operating expenses were increased by reason of the reserve clause in Organized Baseball, but it was increased, there is not any question about it. The cost of the reservation, trying to get those boys to come away for the simple reason that they told me "I have to do the best I can for three years, and at the expiration of those three years there will not be any field for me in organized baseball and consequently, I have to quit, and if you people should happen to fall down in this contest or this fight, you have with organized baseball, we certainly will be out of it anyway." Baltimore could get young players, but those gotten from Organized Baseball were most all old players. Were desirous of getting players that were
367 known to the public and had a reputation.

Asked whether it was easier to get a young man or an old man to accept employment from the Federal League witness said "The older ones I think would rather come for the simple reason they anticipated that they were just about out of it." After breaking up of the Federal League, contracts with players were of no value to the Baltimore club. They were a liability. If at the time the Baltimore club was organized there had been a free market for players, there isn't any question that there would be baseball in Baltimore today. Baltimore has a population of 750,000, and the people are very desirous of having major league ball there and would pay for it, and would support baseball as well as any city in the country. The Baltimore club could have been conducted with profit. The conditions in Baltimore today are as good as in any city in the country for ball. There is plenty of money in Baltimore. It could have been conducted at a sufficient profit to pay a fair return on the investment in 1914 and 1915, witness thinks.

On cross-examination the witness testified that players haven't so much to do with the value of the club franchise as has the size of the city. "The players naturally follow big cities as a rule." The quality of the players at least temporarily influences the value of a franchise, especially if the club should happen to be up in the race that season and drawing pretty well.

The witness was asked to what extent if at all the value of the franchise is affected by the right of the club to retain, under its reserve clause, the services of players, and he replied that he could

not answer the question very well, that he did not know whether there would be any difference or not. The question was repeated and witness said: "The right of reserve would not be of any value if it was one club. If it were eight clubs it would be different." In valuing the Philadelphia franchise would have given the same opinion of value if all players had been free agents. "Because it
368 is an open market, and they would have a chance, if I happened to be down in the race, to give me an opportunity to get a lot of good players, with a chance of winning the championship the next year." Witness would not say that if the combination of players were a winning one, the control over the players for the next year enters into the value of the franchise. By an open market does not necessarily mean that every club would have right to bid against every other club for the services of any player.

"A lot of business men would not go into anything of that kind, an open market, and bid their heads off for players." There is not any reason why they should not conduct their business just the same as any other business concern, to an extent. "There is a way you can get around this reserve, in some other way other than the way you have it at present," there is not any question in his mind about that. An open market would be where each club goes after unreserved players and all the clubs are bidding against each other for players that they all want. Asked if a club franchise involving the necessity of going and bidding for players in the open market is of as much value as the franchise of a club that already has a winning team under contract and in reserve, the witness answered: "It might be just as valuable if they were sensible business men and did not go bidding against each other for players." Does not know whether sensible business men would agree not to bid against each other. A sensible business man "would go as far as he thought the ability of that club would be to draw, and stop there." If a club wanted to sell its franchise at the end of a season when it had been down in the race, it would not bring as much money as if they had been up. Asked if it is not true, under the conditions suggested, that the value of the franchise would have been injuriously affected by the open market, the witness answered: "That is the question in my mind. There is a way you can get around that matter, so that it
369 would be fair to all, in my own judgment." Asked to state that way, the witness answered: "I should think through a contract with the player, for six or seven years, possibly, a ten-day clause in there;" that such a contract does not close the market for the services of players, because of the ten-day clause therein, which gives the club the right upon ten days' notice to dismiss the player. Asked if the ten-day clause was not for the benefit of the club and not the player, the witness answered: "Not necessarily." Asked, if the club did not choose to exercise its ten days' right, whether the player has anything to do with it, the witness answered: "I should not think so."

The witness further testified that one player cannot make failure or success of a club, but there have been exceptions, as in the case of Speaker of the Cleveland Club and Cobb of the Detroit Club,

But, if there were several high class men under the control of a club at a given time, witness would think it would make a difference between success and failure of the club for the time being. Asked if, when he stated that the reserve clause did not enter into the value of the franchise, he had not meant comparing the reserve clause with the contract system under which a club holds the player bound for six or seven years, the witness answered: "I thought that that was a way that you might get around it, if the court said that this reserve proposition, holding a man for life, and sending him here and there, regardless of whether he wanted to go, and so on, and so forth, that there was a way through the contract, possibly, that you might get around that, even from minor leagues up to the majors. It would not prevent you from purchasing, because you do that anyway. If you have a player down there you never wait for the draft, but go down there and purchase his release;"—so that the player comes right up, but the witness does not know whether with a corresponding increase in salary,—sometimes he does not.

370 The witness further testified that he thought that a club that has its players under contract running for six or seven years with the ten-day clause, giving the club the right to dismiss a player upon ten days' notice, would be a valuable franchise in a good town and in a good league. Does not know that there would be much difference in value between the franchise of such club and one that held its players under the reserve clause; that a club that had its players under contracts for six or seven years would be as well off as the club that had the right to reserve, and both such clubs would be better off than a club that did not have any reserve or long term contracts and was compelled to compete for its players year after year. Thereupon the following question was asked and answered:

Q. A little while ago, when Mr. Marbury put to you the question of what the value of the Baltimore franchise would have been in the fall of 1915 if there was going to be an open market for players and you gave him your answer that the franchise would have been about twice as valuable, you meant, did you not, an open market as far as organized baseball players were concerned, but a system where the Baltimore club could have had those long term contracts, or its reserve clauses. When you spoke, in answer to Mr. Marbury's question, you were referring to an open season on Organized Baseball players, were you not? A. Yes, sir.

The witness further testified that he was supposing a closed season in the Federal League and an open season in Organized Baseball.

Has mentioned cities and leagues as important elements in the value of a franchise. Witness' experience in baseball—and he has been in three different wars—is that salaries run so extremely high that nobody makes money, whether in a new or an old league.

"People are partly disappointed under the conditions, the
371 opinion of the press." Consequently franchise is not as valuable at that time as it would be under the contract system. But witness would not say that conditions in the Federal League in 1915 were such as to make its franchise relatively of less value.

Thereupon there was asked and answered the following:

"Q. What was there in the experience of buying and selling Federal League franchise at that time, which would enable you to put a value upon a Federal League franchise in a particular case? A. I just took the city into consideration, 750,000 people, in comparison to others in Organized Baseball, as at least worth $150,000 in any city today, whether they have a ball club or not, a minor league or not, with a city of that size it is certainly worth that amount of money. There is no question about it."

The question was restated and witness was asked to confine himself in his answer to the character of the league. He thereupon answered:

"A. I just took it from the line of Organized Baseball, and their franchises, taking cities into consideration, the population, and so on and so forth."

The witness further testified that he does not know of the sale of any Federal League franchise; that the good will of a league has not always anything to do with the value of the franchise. In considering the league he would take the population of the cities and the players into consideration, and possibly the drawing abiiity of the individual clubs. Thinks the Federal League had been established long enough to have an element of good will in its franchise. Cannot be sure that any league is going to be permanent, but everyone that went into it hoped that it would be a third major league. We believed that we could build an organization that would interest the people to go out and see good baseball. Supposes some people
372 had confidence that the league would continue and that some did not. Does not know whether players believed the league would continue, but does know that those players which they obtained from Organized Baseball tied them up to long contracts, not knowing whether we would get through the year, and consequently we had to give them contracts for three years and bonuses and large salaries. Expects they may have had some doubt of it when they asked for long contracts. These three or four players that witness talked to who went into the Federal League told witness they were notified that they would not be taken back into Organized Baseball if they went with the Federal League; when players in any considerable number have gone from organized baseball in a new organization and the new organization disintegrated they have been taken back in organized baseball by agreements. In the fights of the Player's League and the American League this league consolidated with Organized Ball. "The first thing that came up was, you have to take care of the players, those people had went out, as you call them, outlaws—they would naturally request that when they consulted with the other clubs, and for that reason they took players back just the same as they did in the Federal League here when these people threw down Baltimore, the way I understand it, that the players were to be taken care of as part of the consideration."

The players were taken back when the Brotherhood disintegrated. Is not familiar with the Tri-State League. Does not remember that

when the Pacific Coast League disbanded the players returned to Organized Baseball. Cannot answer either way.

Witness does not know that there is always more of a demand for skilled players than there are players to meet the demand. There are about six players who are stars who stand out more than any others in the profession. Stars never have any trouble in getting employment.

The skill and ability of many of the ten thousand profes-
373 sional baseball players in the country is covered up as yet, and "if they had opportunity possibly they might rise to the average ball player in the major leagues." Asked if there was any way in which opportunities can be given to those unknown players better than to develope them through the minor league system, the witness answered: "My experience has been that they have been left down there year after year, some of them, and it may be possible if they have had a contract for a year or two or three years and that contract expired they might be in a position to better their profession." When asked if he knew of any such players in 1913 and 1914, he stated that he had been out of the game for quite a while and was not in touch with those kind of men. Virtually signed one man, for Baltimore club in Federal League, and that was the manager. Does not think he told whoever was recruiting for Baltimore, the names of any men who were kept down in minor leagues and who had real ability, but who were not given a chance. If he had known of any such players at the time he would have likely told whoever was recruiting for Baltimore their names.

The reserve clause has grown up since 1883, or earlier. Thinks that where there is a disagreement over salaries in the minor leagues there is a right of appeal to the National Board of the National Association. The right of appeal was formerly to the National Commission. Does not know the number of such appeals that have been satisfactorily adjusted. Thinks possibly there is an appeal in the major leagues to the National Commission, where the player and the club fail to reach an agreement, and thinks that the provisions for such appeals were adjusted by the Players' Fraternity and adopted by the leagues. Does not know of late years the extent of failure on the part of the clubs and players to reach satisfactory agreements. At the time the Pacific Coast League disintegrated, witness now recalls he was one of the committee which attended to taking back players of that league into Organized Baseball.

374 Witness started out in baseball at $20 per week, with Provi-
dence, in 1876, which was in the New England League, a part of Organized Baseball. There was not any reserve clause at that time. Thinks the first reserve clause in any of his contracts was with Cleveland in 1880, where he got $125 per month. Then went to Detroit in the National League and salary gradually worked up. Salary raised in appreciation of his getting certain players from Buffalo. Received around $2,200. His release was sold to Pittsburgh. Refused to go for a long time, but as there was no open market for him and no other place for him to go had to go to Pitts-

burgh finally. At Pittsburgh received $2,000. Thinks $2,000 was then the limit. This was about 1889.

Witness thinks there have been national agreements in one form or another since 1883, except in 1902. Present National Agreement is not a new thing. It is the outgrowth of agreements that went before.

From Pittsburgh witness went to Baltimore, where his long years of management commenced. Highest salary he drew as player was $3,000 or $3,500, which was paid by different clubs he was with. At Baltimore had contract for $2,500 or $3,500 as manager, with $1,500 additional if he played ball.

Thereupon the following question was asked:

Q. Supposing you had been working all this time that you have described under a Federal League contract which provides for a five per cent increase per annum, would your advances have been financially as satisfactory as the advance which actually took place in Organized Ball?

Counsel for plaintiff thereupon objected, which objection by the Court sustained and an exception noted.

Counsel for defendants then asked the following question:

Q. Will you tell us what you received as manager at different times when you were working in the ranks of Organized Ball?

375 Whereupon counsel for plaintiff objected, which objection was by the Court sustained, and an exception noted.

The witness further testified that he left Baltimore for Brooklyn in 1898 or 1899; that the American League played in Baltimore in 1901 or 1902. The National Agreement had existed down to 1901 when the American League withdrew, and in 1902, for the first time since 1883, there ceased to be any National Agreement. Thinks that at that time reservation ceased to be respected, and American League players in Baltimore were induced to go elsewhere; that there was an open season on players and the club was broken up.

Thinks that the National Agreement provides that major league franchise cannot be withdrawn without unanimous consent of everybody in the league. It is true that by virtue of National Agreement clubs in each league are bound to respect contracts and reservations of all other clubs. In September, 1903, was manager of the Brooklyn club, and had ten per cent interest. Does not remember that he took part in the negotiations which resulted in the National Agreement of 1903. That owners of Brooklyn assented to it, and he was one of the club owners at the time, but does not know that he was consulted.

The grounds which witness leased to the Federal League club are not the grounds which he leased to Mr. Dunn, which are across the street. Sold the International Club to Dunn, which witness then owned. Dunn took possession of the Park on the south side of the street.

For some two or three years afterwards, witness did not do anything with the Park on the North side, and he gave Dunn a chance

to take the ground on the north side in addition to what he had, before leasing it to the Federal League Club. Went to see Dunn on two or three occasions, and told him he could lease it for $1,500 a year, in addition to the lease he already had. Dunn said possibly the Federal League would go to some other part of the City, and he did not consider the proposition. The Federal League took the
376 option and built on the grounds, but Dunn went to Richmond and took his franchise. Had Dunn accepted the proposition, witness would not have received two per cent on his investment, because he would have had a lease for possibly ten years. When Dunn went to Richmond witness let him off on his lease. Witness took interest in Federal League on condition that they would not interfere with Dunn's players, which they did not, and Dunn sold several players for $7500 or $8000. The Federal League's failure to touch Dunn's players was on his suggestion, and not the result of any agreement with Dunn.

The witness further testified that one of the purposes of the National Commission is to unify playing rules. There is a Rules Committee, of which witness was a member for some four years. The game must be played, as time goes on, under some authority that everyone recognizes. Committee reports, and if adopted it becomes a regulation.

The plaintiff, further to maintain the issues on its part joined, called as a witness in its behalf HARRY H. MOWREY, who being first duly sworn, testified on direct examination as follows:

That he is 35 years old, and has played professional ball since 1903. Previous to that played as an amateur. Played with Chester, an independent club, for a month and a half, when it disbanded because they didn't have any money. Then went to York and finished out with an inedependent club—until they closed. Went to Chester in the fall of 1904, and it disbanded again. Went to Williamsport, in the old Tri-state League, where he was dissatisfied, and signed contract with Savannah in Organized Baseball. Did not go to Savannah, but finished the season at Williamsport. Rochester, in the then Eastern League, wanted him, and as he was in an outlaw league, they did not go to the Club like they would in Organized Baseball but did business directly with
377 him. Next year Savannah and Rochester clashed over his services. Was notified by Savannah Club to report there, but told them he would not for the salary of $150 per month, which was provided in the contract he had previously signed. Played balance of season with Savannah and was purchased by Cincinnati in 1905. Was under the reservation clause as soon as he entered Organized Baseball. The following year Cincinnati raised his salary but he was sent down to Baltimore. Reverted to Cincinnati in August before what they called the drafting season opened—that was to protect the Cincinnati club for my services and was there until 1911, when witness hurt his knee and was traded to St. Louis, but was unable to play there. They fixed him up and operated on his knee. 1914 was the first

season of the Federal League. From St. Louis witness was sent to Pittsburgh, and the Federal League was then bidding for players. Mr. Dreyfuss, of the Pittsburgh Club, sent him a contract, but witness told him he could get more money in the Federal League, and Mr. Dreyfuss said the salary named was all he could pay. Then had conference with Federal League in Baltimore, and upon his return home Mr. Dreyfuss wired him to give him a chance, and called witness over the long distance phone. Witness told him: "I thought you were all through. You said that was all you would pay," and Dreyfuss said: "You know what happened to Jess Tannehill," witness said he did not know what happened to Tannehill, but he had an idea Dreyfuss had driven him out of Organized Baseball, perhaps witness may be wrong, that was his threat. Witness replied: "Oh, Mr. Dreyfuss, you may be dead in three years," by which witness meant that Dreyfuss might not be living at the expiration of his Federal League contract, to keep him out of Organized Baseball; that witness was not under contract with Dreyfuss except what was in the reserve clause,—that is, he had signed a contract with St. Louis containing the reserve clause. He had fulfilled his contract with St. Louis, but was reserved by St. Louis, and they had turned it over to Pittsburgh. Didn't come to an agreement
378 with the Federal League. Had conference with Mr. Dreyfuss and Governor Tener, at Governor's mansion at Harrisburg, and discussed the proposed contract with Pittsburgh. They started to convince him that the Federal League would not last, and Governor Tener said he did not expect Federal League to last 24 hours. Witness eventually signed a contract with Mr. Dreyfuss. The terms he wanted with the Federal League were $4500 or $5000 for three years, which he wanted deposited in bank, that $13,500 or $15,000, where he could get his money twice a month. Asked why he made this extraordinary demand witness answered because he did not know how long the Federal League might be in existence, but did know that the National League and every minor league outside of the independent clubs had paid him his salary. Had received salary of $2100 at Cincinnati which was raised the following year to $2400 and the year later to $2800. At St. Louis he received $3000. $3000 was the most he received from Organized Ball before the Federal existed. Never got any deposit from Organized Baseball, where he was paid regularly.

On cross examination the witness testified that he did not have to sign with Mr. Dreyfuss unless he wanted to; that the new contract had an increase of a few hundred a year, which made it about the same as the Federal League offered. It had the ten-day clause which he knew made the contract worthless, but he signed it and took the chance of being able to go through. He knew if he was able to play good baseball, he would get his money, and that was one of the reasons why he signed the contract. Also had other private reasons.

The plaintiff further to maintain the issues on its part joined, called as a witness in its behalf CLARENCE DIXON RUSSELL, who being first duly sworn, testified on direct examination as follows:

That he lives in Baltimore and stopped professional baseball two years ago, because he could not get enough money.
379 "Could make more working." That he last played with Newark, and is now inspector of concrete work for the Bethlehem Steel Company, at which he can make more money than playing professional baseball. First played with the Baltimore International League Club in 1909, under Mr. Hanlon; that they took him on the spring training trip for practically a month, and he pitched quite a few exhibition games; that he won every game he pitched with one exception; that he never had a trial in the league. Was sent to Rochester and from there to Wilkes-Barre, where he played about three weeks and they let him go; from there went to Hagerstown and played a year in semi-pro ball. Was under contract at the time with the Baltimore club, but they didn't molest him until he gained a little prominence, and he was sent for. They did not want to give him as much money as he was making, and he was suspended by the Baltimore club. Dunn reinstated him, and witness signed a contract in 1910, and was sold to the Athletics for a "whole lot of paper money, $12,000. I do not know how much cash it was." Witness did not see any of it. Witness thought he was entitled to a little of it, as witness thought he had made himself as much as any manager. Does not think any manager can make a ball-player. They make themselves. A manager may improve a player. Witness did not get any part of the $12,000. Mack offered him less money than he was making in Baltimore. He was offered $300 a month, but thought he was entitled to a raise over the minor league contract. Held out all winter. Witness thought he was worth more than $1800 and being sold for such a big amount of money he thought the public would demand some consideration there. Mack finally consented to give him $2400, and witness thought it was a case of go over there and play or stay out in the cold, that is get out of baseball. His services were sold to the Athletics and he could not go to any other professional baseball club in the United States. "That is where I had to go, go there whether the money suited me or not."

380 The plaintiff, further to maintain the issues on its part joined, called as a witness on its behalf DAVID LANDRETH, who being first duly sworn testified on direct examination as follows:

That he is director and stockholder of the Baltimore Club. Was baseball fan and used to see about 50 games a year in Philadelphia. Witness saw they were organizing a team in Baltimore and everybody seemed to be welcome to get into it, and witness wanted to help back a league for good sport, so wrote down from Bristol Pennsylvania, where he lived, asking if he could subscribe to stock.

Had business in Baltimore. Attended directors' meetings pretty regularly. Not to knowledge of witness did any meeting of the directors or the executive committee or the stockholders ever author-

ize any one to negotiate on behalf of the Baltimore Federal League club with Organized baseball, for anything.

The plaintiff, further to maintain the issues of its part joined, called as a witness in its behalf EDWIN W. POE, who being first duly sworn, testified on direct examination as follows:

That he is vice-president of the Baltimore Trust Company which was one of plaintiff's depositories; that he was a director in the plaintiff club, and the Trust Company loaned it money, as high as $43,000 at one time; that he attended directors' meetings; that never to his knowledge was there any resolution adopted or any action taken at any meeting of the directors, executive committee, or stockhol-ers, authorizing anyone to negotiate on behalf of the club with Organized Baseball, for the purpose of securing a franchise, or anything of that sort.

The plaintiff, further to maintain the issues on its part joined, called as a witness in its behalf GEORGE SCHLEWNES, who being first duly sworn testified on direct examination as follows:

That he subscribed for stock upon the organization of the plaintiff club, and became a director. In 1915, he was elected Treasurer.

Attended practically all meetings of the Board of Direc-
381 tors. There was never any meeting of the directors, stockholders or executive committee authorizing any one to negotiate on behalf of the plaintiff club for the acquisition of a franchise in Organized Baseball, or to deal in any way with Organized Baseball.

At the request of the plaintiff, counsel for the defendants stated that "the defendants admit of record that the corporate titles of the several defendant corporations are correctly stated in the declaration, and that the habitat of each of those corporations is in the city which, in the declaration, is alleged to be the place of its origin"; and that defendants would accept the statement of counsel for plaintiff and treat as a fact that the corporate titles of constituent clubs of the Federal League are correctly designated in the declaration and that the habitat of each of those corporations is the city which in the declaration is alleged to be the place of its origin.

Thereupon the defendants produced, as called for by the plaintiff, statement of certain payments by the National League, which was offered and received in evidence, and is in the words and figures following:

382 The National League of Professional Baseball Clubs, No. 8 West 40th Street, New York, N. Y.

Office of the President.

*Statement of Payments Made by the National League of Professional Baseball Clubs to Federal League Clubs, Subsequent to the "Peace Agreement" of December 22, 1915.*

| | | |
|---|---|---|
| January 18, 1916 | To Charles Weeghman | $50,000.00 |
| February 23, 1918 | To J. E. Hindman, Attorney for Pittsburgh Trust Company, Receiver for Exposition Park Ass'n. of Pittsburgh | 25,000.00 |
| February 23, 1918 | Newark Federal Baseball Club | 10,000.00 |
| February 23, 1918 | Federal League Baseball Club of Brooklyn | 20,000.00 |
| February 23, 1918 | Federal League Baseball Club of Brooklyn | 10,000.00 |
| February 24, 1918 | Newark Federal League Baseball Club | 5,000.00 |

New York, N. Y.,
March 29, 1919.

JOHN A. HEYDLER,
*Treasurer.*

383 Thereupon, as called for by the plaintiff, the defendants produced statement of certain payments by the American League, which was offered and received in evidence, and reads as follows:

American League of Professional Baseball Clubs.

Fisher Building,

Chicago.

*Federal League Settlement.*

| | | |
|---|---|---|
| February 23, 1918 | Pittsburgh Club | $25,000.00 |
| February 23, 1918 | Rental of Newark Park (Two Years) | 10,000.00 |
| June 6, 1918 | Brooklyn Club | 20,000.00 |
| February 17, 1919 | Brooklyn Club (Cancellation of Note) | 10,000.00 |
| March 1, 1919 | Rental of Newark Park | 5,000.00 |

Counsel for defendants stipulated that the two foregoing statements respectively represent the amounts paid by the National and American Leagues under the terms of the so-called peace agreement of December 23, 1915, and that the source of the payment in each case was

a fund in the said two leagues, which fund was produced by an assessment on a certain percentage basis of the gross receipts of the constituent clubs of the two leagues.

384 Thereupon counsel for plaintiff offered in evidence certified copy of the order dismissing the equity suit entitled "The Federal League of Professional Baseball Clubs v. The National League of Professional Baseball Clubs, et al.," which suit is referred to in the declaration and testimony as having been brought in the Northern District of Illinois before Judge Landis. The document so offered was received in evidence, and reads as follows:

Now come the parties by their respective solicitors and now comes on to be heard the motion to dismiss the above entitled cause;

It is ordered by the Court that this cause be and the same is hereby dismissed upon consent of all the defendants herein, without prejudice to the Federal League Base Ball Club of Baltimore, incorporated, each party to pay own costs.

Counsel for plaintiff thereupon offered, and there was received in evidence, list of minor leagues of the National Association and of the names of the clubs composing same, which list reads as follows:

International League: Newark, Rochester, Baltimore, Montreal, Providence, Toronto, Buffalo, Jersey City.

American Association: Milwaukee, Minneapolis, Louisville, Columbia, St. Paul, Cleveland (formerly Toledo), Kansas City, Indianapolis.

Pacific Coast League: San Francisco, Oakland, Sacramento, Los Angeles, Venice, Portland.

385 Southern Association: Atlanta, Mobile, Birmingham, Chattanooga, Montgomery, Memphis, Nashville, New Orleans.

Tri-State League: Wilmington, Allentown, Harrisburg, York, Trenton, Atlantic City.

Central League: Grand Rapids, Fort Wayne, Springfield, Dayton, Terre Haute, Evansville.

Northwestern League: Vancouver, Portland, Seattle, Victoria, Tacoma, Spokane.

New York State League, consisting of the principal county seats in New York State.

Eastern Association, consisting of eight principal cities in New England States, excepting Boston, including such cities as New Haven and Springfield.

New England League, consisting of eight cities such as Portland, Fall River, Lowell and other towns of similar size in the New England States.

Indiana-Illinois-Iowa League, consisting of Quincy, Dubuque, Davenport, Danville, Decatur, Springfield, Bloomington, Peoria.

And various other similar smaller leagues of six or eight clubs in the locality generally indicated by the title of the League, namely: Southern Atlantic League, Northern League, Virginia League, Western Illinois League, Southern Michigan Association, Western Tri-State Association, Appalachian League, North Carolina League, Texas Oklahoma League, Kansas State League, Michigan State League, Nebraska State League, Border League, Western Canada League,

Union Association, New York and New Jersey League, Central Association, Cotton States League, Illinois-Missouri League, Em-
386 pire State League, Kentucky-Indiana-Tennessee League, Ohio State League, Georgia-Alabama League, New Brunswick-Maine League, Western League.

The plaintiff thereupon offered and there was received in evidence what is known as the fraternity agreement made between National agreement leagues, clubs and players, dated January 6, 1914, also the rules and regulations governing the National Commission revised and in force January 1, 1914. These Exhibits are elsewhere printed in this Bill of Exceptions.

Counsel for plaintiff thereupon called for, and the defendants produced, copy of the constitution of the American League of Professional Baseball Clubs, which was offered and received in evidence on behalf of plaintiff, and reads as follows:

*Constitution of the American League of Professional Baseball Clubs.*

Name.

Section 1. This Association shall be called "The American League of Professional Baseball Clubs."

387 Objects.

Sec. 2. The objects of this League are:

(1) To perpetuate baseball as the National game of the United States, and to surround it with such safeguards as to warrant absolute public confidence in its integrity and methods.

(2) To protect and promote the mutual interest of the clubs of this League and its players.

(3) To establish and regulate the baseball championship of the American League.

Membership.

Sec. 3. This League shall, for a period of twenty years, consist of eight clubs, respectively located in the following named cities, to-wit: Chicago, Detroit, St. Louis, Cleveland, Philadelphia, Boston, Washington, New York or such other clubs in these or other cities as may from time to time be elected to membership, as may be hereinafter provided for; but in no event shall there be more than one club in any city or more or less than eight clubs in the league.

Withdrawal from Membership.

Sec. 4. Any club member of this League finding itself unable to meet the obligations it has assumed shall have the right to ask the League for permission to dispose of its rights and franchises as a member of this League to an organization in its own or some other city. In the event of this League giving its consent to the acceptance

of such organization to membership, such club member shall be admitted to membership, providing said new club shall assume, together with the rights and franchises of said retiring club, all the liabilities, responsibilities and obligations entered into by said
388 retiring club as a member of this League. Provided, however, and it must be so understood by the retiring and the new member, and by them agreed with the League, that the retiring club shall not be relieved or released from any contract, responsibilities or obligations entered into by it to this League, until all of said contracts, responsibilities and obligations have been fully paid and determined by the club accepting its membership rights, franchses, etc.

## Admission to Membership.

Sec. 5. Admission to membership in the League shall conform to the provisions of a certain agreement, preliminary to the reorganization of this League, adopted on February 16, 1910.

## Termination of Membership.

Sec. 6. The membership of any club may be terminated

(1) By resignation duly accepted by a three-fourths vote of all clubs in meeting.

(2) Failure to present its nine at the time and place, agreed upon to play any championship game, unless caused by unavoidable accident to traveling.

(3) Allowing open betting of pool selling upon its grounds or in any building owned or occupied by it.

(4) Playing any game of ball with a club that is disqualified or ineligible under this constitution.

(5) Offering, agreeing, conspiring or attempting to lose any game of ball, or failing to immediately expel any player who
389 shall be proven guilty of offering, agreeing, conspiring or attempting to lose any game of ball, or of being interested in any pool or wager thereon.

(6) Disbandment of its organization or team during the championship season.

(7) Failure or refusing to fulfill its contractual obligations.

(8) Failing or refusing to comply with any lawful requirements of the Board of Directors.

(9) Wilfully violating any provision of this constitution or legislation, or playing rules made in pursuance thereof.

(10) Disposing of a player to a club not a member of this League, unless by the unanimous consent of all club members of this League.

## Expulsion of Clubs.

Sec. 7. To carry into effect the provisions of Section 6 of this constitution, the facts in any case covered by such section must be reported to the Secretary of the League, who shall at once notify, by mail or telegraph, the party charged with the specific default or

offense, inquiring whether any dispute exists as to the facts alleged. In case the facts are disputed, the Board of Directors shall, after due notice try the case under such regulations as they prescribe, and their finding shall be final and conclusive on all parties, unless it be for expulsion, when such finding shall be forwarded to each club not in fault, which shall transmit to the Secretary a written ballot "For Exulsion" or "Against Expulsion;" and if all clubs vote "For Expulsion" the Secretary shall notify all clubs of the for-
390 feiture of membership of the party charged.

## Assessments and Fines.

Sec. 8. Each club shall pay to the Treasurer such sums as from time to time may be assessed for the payment of salaries of officers and umpires, and for such other expenses as may be incurred by order of this League or the Board of Directors. All fines and penalties imposed by said League, its Board of Directors or president upon a club or upon any club officer, player, manager, scorer or other employe when so levied and imposed by virtue of and in accordance with the provisions of this constitution and the playing rules of this League shall be promptly paid to the Treasurer.

## League's Sinking Fund.

Sec. 9. The home club shall transmit to the Treasurer of the League a tabulated statement of the receipts of each game, which shall include all general, pavilion and grandstand admissions. Prior to any division of receipts of a game, ten per centum of all paid admissions on a basis of 25 cents each shall be deducted and forwarded by the home club to the Treasurer of the League for the Sinking Fund. Such report and remittance must be made to the League's Treasurer by the home club at the conclusion of each series. At the annual meeting, after all debts incurred by the League, and all current expenses have been paid, the balance in the Sinking Fund, less an amount deemed adequate to meet operating expenses of the League during the off season, shall be equally divided among the clubs.

391

## Fines in Lieu of Expulsion.

Sec. 10. Upon the conviction *of* any of the offenses prescribed in Section 6, as causes for expulsion, the Board of Directors, may in the first instance, as a preliminary to or in lieu of expulsion, impose such a fine as in their judgment is commensurate with the injury; which fine may include a penalty payable to any other club or clubs, as an equivalent for damages sustained for such violation of this constitution or of the legislation or contracts made in pursuance thereof.

Officers.

Sec. 11. At its annual meeting, the League shall elect a President, Vice President, Secretary and Treasurer, and Board of Directors. The President shall be ex-officio chairman of the Board of Directors. He shall preside at all the meetings of the League, and at the spring meeting of the League, shall arrange a playing schedule for the League.

Vacancy in President's Office.

Sec. 12. Should the office of President become vacant by death or resignation, the Board of Directors shall at once choose a President, who shall serve until the re-election by the League of his successor, which election shall be held within 30 days of the death or resignation causing the vacancy.

Sec. 13. The Board of Directors shall consist of the President and four other members, to be chosen at the annual meeting by
392 ballot, two of whom shall represent the Eastern clubs and two the Western clubs.

Qualification of Directors.

Sec. 14. No person shall be qualified to act as Director who is not an actual member of the club he represents, nor shall any club under any circumstances, be represented by more than one person on the Board.

Duties of Board of Directors.

Sec. 15. The Board shall have the general supervision and management of all affairs and business of the League and shall be individually answerable to the League for the faithful discharge of the trust.

Sec. 16. The Board shall meet annually on Wednesday morning after the second Tuesday in December at 10 o'clock but may hold special meetings whenever urgent necessity may require.

Sec. 17. The Board shall prepare a detailed report of all their doings, and present the same in writing to the League at its annual meeting, which report shall, if accepted, be filed with the Secretary, together with all official papers, documents, and property, which may have come into their possession by virtue of their office.

Vacancy in the Board.

Sec. 18. In case of vacancy in the Board by reason of the death, resignation, absence or disqualification of any director, the club of which he was a member at the time he was chosen shall designate his successor, and at once notify the Secretary. But if such
393 vacancy is caused by the withdrawal, disbanding or disqualification of a club represented on the Board, the Board may

fill the vacancy by electing a successor, under the restrictions imposed on the election of Directors in Sections 13 and 14.

Duties of President and Secretary.

Sec. 19. The Secretary shall be the Treasurer of the League and as such shall be the custodian of all funds of the League; receive all dues, fees and assessments, make such payments as shall be ordered by the Board, or by the vote of the League, and render annually a report of his accounts, and shall give such bond, with approved sureties, as the Board may require.

Sec. 20. The President, in the performance of his duties, shall have the power to impose fines or penalties, in the way of suspension or otherwise, upon any manager or player who, in his opinion, has been guilty of conduct detrimental to the general welfare of the game.

Sec. 21. The Secretary shall have the custody and care of the official records and papers of the League; shall keep a record of all meetings of the League and the Board; shall issue all official notices, and attend to the necessary correspondence, he shall prepare and furnish such reports as may be called for by the Board, and shall be entitled to such books, stationery, blanks and materials as the actual duties of his office may require.

Sec. 22. The Secretary shall keep a record of all infractions of the rules and regulations of the League that may come under his notice, and shall make a report on the same to the Board at its meeting.

394 Sec. 23. The President shall receive such salary as the League, by vote, shall determine, and shall be reimbursed for all traveling expenses actually incurred by him in the service of the League; and the Board may exact from him such guarantees for the faithful performance of his duties as they would deem for the interest and safety of the League. At the expiration of his term of office he shall account for and deliver up to the Board all the property and papers which may have come into his hands by virtue of his office.

Individual Club's Control.

Sec. 24. Each club belonging to this League shall have the right to regulate its own affairs, to establish its own rules, and to discipline, punish, suspend or expel its manager, players or other employes, and these powers shall not be limited to cases of dishonest play or open insubordination, but shall include all questions of carelessness, indifference or other conduct of the player that may be regarded by the club as prejudicial to its interests, but not in conflict with any provision of the National Agreement or this constitution.

Mode of Contract.

Sec. 25. An informal agreement, evidenced by telegram or in writing, shall give a club title to a player, but a player shall not be

eligible to play in championship games for longer than five (5) days unless he shall have signed a contract in the form approved by the National Commission.

Sec. 26. Each club member of this League shall be entitled
395 to the right of reservation.

Making Contracts.

Sec. 27. This League shall adopt such form of contract as it may deem best for the protection of the rights of the parties thereto. All contracts must be approved by the President, and duly promulgated by him. No club shall at any time enter into negotiation or contract with any player under contract, agreement or reservation with or by any other National Agreement club, without the latter's consent.

Expulsion of Players.

Sec. 28. Any player, while under contract with or reservation by a League club, who shall, without the consent of such club, enter the service of any other club in any capacity, shall be liable to expulsion by said League club. Whenever a club releases a manager or player without notice, or gives him notice of release in accordance with the terms of his contract and whenever it suspends or expels a manager or player, that club shall at once notify the Secretary of this League, stating, in case of release, the date when the same takes effect, and in case of suspension or expulsion, the cause thereof, and the president of the League shall immediately notify all clubs of such release, suspension or expulsion.

Negotiating for Services.

Sec. 29. No player, without the consent of the club with which he is under contract or reservation, shall enter negotiations with any other club for future services, but if such consent be obtained,
396 a player may negotiate for his release.

Effects of Club Disbandment.

Sec. 30. The disbandment of a League club or its withdrawal from or loss of League membership shall operate as an award to the League of the players under contract and reservation with said club, but the right to contract with and reserve said players shall be subject to transfer to such other club as the League may designate after acceptance of their said services.

Suspension of Players.

Sec. 31. No manager or player who has been suspended or expelled from a League club shall at any time thereafter be allowed to play with or serve in any capacity in any League club (either the one expelling him or any other) unless the term of suspension by the

club has expired, or upon his appeal to this League or the National Commission, such suspension or expulsion shall have been set aside.

Playing Against Ineligible Players.

Sec. 32. No game of baseball shall be played between a League club and any other club that has been expelled from membership in this or any other National Agreement League. No game of ball shall be played between a League club and any other club employing or presenting in its nine a player expelled or under suspension from this League or otherwise rendered ineligible under the laws of organized ball.

Penalty for "Crookedness."

Sec. 33. Any person who shall be proven guilty of offering, agreeing, conspiring or attempting to cause any game of ball to result otherwise than on its merits under the playing rules, or who, 397 while acting as umpire, shall violate any provisions of the Constitution, or of the Playing Rules adopted hereunder may be forever disqualified by the President of the League from acting as umpire, manager, player or in any other capacity in any game of ball participated in by a League club.

Umpire and His Duties.

Sec. 34. A staff of League umpires shall be selected by the President before the opening of the regular season.

(1) They shall be paid such salaries and allowed such expenses as may be mutually agreed upon by contract between them and the President of the League.

(2) They shall be under the sole control and directions of the President, from whom they shall receive all assignments to duty and all instructions regarding the interpretation of the playing rules, and the President shall prescribe a proper uniform for them, all parts of which shall be worn while officiating as umpires.

(3) In the event of an umpire not filling an assignment, the President of the League may impose such penalty as he may deem adequate.

(4) It shall be the duty of each League club to accept as umpire for any championship game such League umpire as the President shall assign to such game, but if the umpire assigned to such game fails to report at the hour set for its commencement, the captain of each scheduled team shall select a player from the opposite team to act as umpire and the players so selected shall umpire said game.

(5) Any League umpire shall be subject to removal by the President at any time, and in the event of the resignation, re-
398 moval or expulsion of any League umpire, the President shall have power to appoint a suitable person to fill the vacancy thus created.

Settlement of Club Disputes.

Sec. 35. The Board of Directors shall be the sole tribunal to determine disputes between clubs; the facts to be submitted, and the disputes adjudicated under such regulations as the Board shall prescribe in each case. The finding of the Board shall be final, and under no circumstances shall be reconsidered, reopened or inquired into either by the League or any subsequent Board.

Charges Against Players.

Sec. 36. The Board shall at once consider any complaint against a manager or player of another club for conduct in violation of any provision of this Constitution, or prejudicial to the good repute of the game of baseball, and shall have the power to require the club to which such players or manager may belong to discipline him, and upon repetition of such offense to expel him. Provided, that such complaint be preferred in writing, giving such particulars as may enable the Board to ascertain all the facts, and be transmitted to the President by whom it shall at once be referred to the Board.

Complaints by Players.

Sec. 37. In case a player under contract with a League club, shall, during a current season, prefer a complaint in writing to the President of the League against such club, alleging that such a club is in arrears to him for salary for more than ten days after such salary became due on account of such contract, the President shall at
399 once transmit to said club a copy of such complaint, and require an answer thereto. On receipt of such answer, or if one week shall have elapsed without the receipt of an answer, the President shall refer the papers in the case to the Board of Directors through its chairman, and should the Board find the player's complaint sustained, they shall require the club, under penalty of forfeiture of its membership, to pay to the player forthwith the full amount ascertained to be due him. Provided, that should the player refuse to serve the club pending action by the Board on his complaint he will thereby forfeit the benefits of the award, and in such case the Board shall revoke its award.

Court of Appeal.

Sec. 38. The Board shall also be the sole tribunal for the hearing of an appeal made by any player who shall have been expelled, suspended or disciplined by his club. The matter shall be proceeded

with in the following manner: Such person shall, within thirty days after the date of expulsion, suspension or discipline, file with the President a written statement of his defense, accompanied by a request that an appeal be allowed him. The President shall notify the club of the request for an appeal, accompanying such notice with a copy of the appeal, and at the next annual meeting, the club by its duly authorized representative, and the appellant in person, by attorney or written statement, shall appear before the Board with his testimony. The board shall impartially hear the matter and render their decision, which shall be final and forever binding on both club and player, subject, however, to appeal by the player to the National Commission.

Sec. 39. No director shall sit in trial of a case to which his club is a party.

## Championship Rules.

Sec. 40. The championship of the American League shall be contended for yearly by the clubs composing the League.

2. The championship season shall extend from such date in April or May to such date in September or October as the League may determine at its stated or special meeting.

## Loan of Players Forbidden.

Sec. 41. Every game played between two clubs from the commencement of the championship season to the completion of the championship series between such clubs shall be a game for the championship. No League clubs shall lend or exchange players to or with each other for any game played during the championship season.

## Number of Games.

Sec. 42. Each club shall play as many championship games with every other club as may be decided upon in the schedule adopted, but a tie or drawn game or a game prevented by rain shall be played off on the same grounds on a succeeding open date within the dates of the same schedule series between such clubs, or any succeeding series. An open date succeeding any series of games between two clubs shall be considered as belonging to and within the dates of the preceding series, providing such a day is not absolutely required by either club to meet its next schedule appointment.

## Championship Regulations.

Sec. 43. Each club shall have half of the championship series of games with every other club played on its grounds, except as otherwise provided in Sec. 42, and in all the details of such games that do not involve the rights of the visiting club under the playing rules, but relate solely to such games as attractive exhibitions to the patrons

of the home club, the visiting club, *the visiting club* shall defer to the wishes of the home club and the visiting club shall furnish to a person designated by the home club the batting order of its nine by 10 o'clock on the morning of the day of each game, or the evening previous if requested. In case of the failure of any visiting club to furnish the batting order of its nine as herein stipulated, it shall forfeit the sum of $10, which amount shall immediately be transmitted to the President of the League upon the receipt of notice from him of the infliction of such fine, which notice shall be given by the Secretary upon receipt of complaint from the home club.

It shall be the duty of the home club to furnish the umpire with a list of the batting order before the commencement of the game under similar penalties for default as herein prescribed.

Championship Schedule.

Sec. 44. The championship games shall be arranged in a written schedule prepared by the President and reported
402 to and adopted by the League by a three-fourths vote before the beginning of the championship season. The schedule shall be provided for an equal number of return games and specify the date of each game, and the date of each series of games. No date in said schedule shall subsequently be changed except (1) by written agreement of two clubs from a date fixed by the schedule for a game between such clubs to another day prior to the first and subsequent to the last date of the same schedule series between such clubs; or (2) as provided in Sec. 42; or (3) by the written consent of three-fourths of all the League clubs. Any violation of this provision shall subject the offending clubs to a fine of $200 each for each offense.

General Admission Fee.

Sec. 45. The general admission fee to all championship games shall be twenty-five (25) cents.

Division of Receipts.

Sec. 46. At the conclusion of each championship games, the home club shall deliver to the Secretary of the visiting club a statement of the receipts, the division of which shall be as follows: The visiting club shall receive one-half of all twenty-five (25) cent admissions and one-half of fifty (50) cents of all other admissions after the deduction of ten (10) per centum of such admissions for the Sinking Fund, as provided in Section 9.

Entrances to Grounds.

Sec. 47. No club shall be allowed to have more than three entrances to its grounds except upon holidays, but for all such
403 days the visiting club shall be given at least 10 days' notice of the whole number and location of additional entrances;

provided, however, emergency gates may be opened by consent of the visiting club if occasion required.

### Stopping Play to Make Trains.

Sec. 48. On any day when either club is required to leave a city in order to reach another city, where it is scheduled to play its next game, the home club shall be compelled, upon proper notice (twenty-four hours in advance and in writing) by the visiting club to begin the game three hours and a half before the time of the departure of the last train by means of which either club can reach the next scheduled point in time. And either club may leave the field at any time within one hour of said train time without forfeiting any rights or privileges, providing five innings have been played, and the umpire shall be the sole judge of the time.

### Rain Checks.

Sec. 49. All admission tickets to League games shall have a rain check good for admission to a succeeding game attached thereto.

### Forfeited Games.

Sec. 50. A club shall be entitled to forfeited games—to count in its series as games won by a score of nine runs to none—in case where the umpire in any championship game shall award the game to such club on account of the violation by the *violation by the* contesting club of any section of this Constitution or of any playing rule; 404 and in the event of said forfeiting being caused by the withdrawal of the players during the progress of a game, or by failure to report with its team at the time fixed for the game, unless official notice has been received from the home club that the game can not be played then such forfeiting club shall incur a penalty of Three Hundred (300) dollars, which shall be payable to the Treasurer of the League within ten days thereafter for the use and benefit of the non-offending club, but said fine may be remitted or modified upon appeal to and a hearing by the Board of Directors.

### Drawn Games.

Sec. 51. Drawn, tie and postponed games shall not count in the series as games, but must be played off, if possible, as provided in Section 42. If they can not be played off, as herein provided, they may subsequently be played off, if sufficient time exists before the close of the season. However, the individual performances of players in any game of five or more innings shall be included in the official averages.

## Double Games for One Admission.

Sec. 52. Double games for one admission shall not be permitted until the last two scheduled series and they shall be compulsory to the extent of playing off all post-poned, tie or drawn games, of the first series, on the first or succeeding day of the second series and all
405 postponed or drawn games in the second or third series, should be played on the next day.

## Winning the Pennant.

Sec. 53. The club which shall have won the greatest percentage of games in the championship series shall be declared the champion club of the American League for the season in which such games were played. In the event that two or more clubs shall have won the same percentage of games, then the Board shall at once arrange a special series of three games between any two of such clubs, such games to be played at the close of the championship season, and the games so played shall be included in the championship record, and counted in determinating the award of the championship. In such case only, the provisions of this Constitution prohibiting the playing or recording as championship games, games played after the expiration of the championship season, shall have no effect. The emblem of the championship shall be a pennant (of the National colors) to cost not less than One Hundred ($100) dollars. On it shall be inscribed; "Champions of the American League," with the name of the club and the year in which the title was won, and the champion club shall be entitled to fly the pennant until the close of the ensuing year.

## Deciding the Championship.

Sec. 54. The championship shall be decided in the following manner.

406 Within twenty-four hours after every match game played for the championship, the home club shall prepare and forward to the secretary of the League a statement containing the full score of the game, according to the system specified in the playing rules, the date, the place where played, the names of clubs and umpire; provided, that in any case where the Secretary shall not receive the score of a championship game within five days after the playing of such game, the club whose duty it is to forward such score shall pay to the League the sum of Two ($2) dollars as the penalty of such default.

At the close of the season the Secretary shall prepare a tabulated statement of the games won and lost by each club, according to the statements so sent him, which statement shall be the sole evidence in the matter, and submit the same, with the statements so sent him,

to the Board, which shall make the award in writing and report the same to the League at its annual meeting.

In making the award the Board shall consider:

(1) The tabulated statements of the Secretary.

(2) Forfeited games.

(3) Games participated in by clubs which have withdrawn, disbanded or forfeited their membership without completing their championship series with all other League clubs, which games shall be counted to the following extent: The Board shall ascertain the least number of championship games played by such club with any club remaining in the League, and shall from the first game participated in during the championship series by such retired club, count in the series of each League club a similar number of games,
407 and all other games participated in by such retired club shall not be counted in the championship series. Provided, that if such retired club shall have failed to play at least one championship game with every League club, all games participated in by it shall be thrown out entirely.

Date of Annual Meeting.

Sec. 55. The annual meeting of the League shall be held on Wednesday after the second Tuesday in December of each year, at 12 o'clock noon.

Club Representation.

Sec. 56. At such meeting each club shall be entitled to two representatives, and in addition thereto any of its officers or ex-officers may be present; but no club shall be permitted to send as representative any person under contract or engagement as a ball player or manager and belonging to the team of said club solely in such capacity. Each representative shall present a certificate from the President or Secretary of his club, showing his authority to act, but no club shall have more than one vote.

League Sessions.

Sec. 57. This League may, upon a majority vote of its members, elect to go into executive session for the transaction of its business, and during such session no club shall be entitled to more than two (2) representatives.

Sec. 58. The Constitution of this League may be altered or amended by a three-fourths vote of the League at an annual meeting.

408 Special Meetings.

Sec. 59. Special meeting may be called by the President of this League on his own option or on the written call of five clubs.

Sec. 60. A representation of a majority of clubs shall constitute

a quorum for the transaction of business, but a less number may adjourn from time to time, until a quorum is obtained.

Sec. 61. The following shall be the order of business unless suspended by a three-fourths vote of the club members.

1. Reading of the Minutes of last meeting.
2. Report of the Board of Directors.
3. Report of Committees.
4. Election of new members.
5. Amendments of Constitution.
6. Election of Officers.
7. Miscellaneous business.
8. Adjournment.

Plaintiff's counsel thereupon called for, and the defendants produced, copy of the constitution of the National League of Professional Baseball Clubs, which was offered and received in evidence on behalf of plaintiff, and reads as follows:

409 Constitution of the National League of Professional Base Ball Clubs.

Adopted February 2, 1876.

As Amended and in Force February 10, 1916.

Name.

Section 1. This Association shall be called the National League of Professional Base Ball Clubs.

Objects.

Sec. 2. The objects of this League are:

1. To immortalize Base Ball as the National Game of the United States.
2. To surround it with such safeguards as to warrant obsolute public confidence in its integrity and methods.
3. To protect and promote the mutual interests of Professional Base Ball clubs and professional Base Ball Players, and
4. To establish and regulate the professional Base Ball championship of this League.

Membership.

Sec. 3. This League shall consist of eight clubs located in and representing the following cities, to wit: Boston, Chicago, Cincinnati, Philadelphia, Pittsburgh, St. Louis and New York, in which last-named city there shall be two clubs (one as now located in the Borough of Manhattan, and one as now located in the Borough of Brooklyn), and in no event shall there be more than one
410 club in any other city, nor shall the membership be increased or diminished, except by unanimous consent of the League.

## Withdrawal from Membership.

Sec. 4. Any club of the League unable to meet the obligations it has assumed may ask the League for permission to dispose of its rights and franchise as a member of the League in that city to some other corporation. In the event of the League giving its consent to the transfer of membership from one company to another, it must be understood and arranged that the new member shall assume with the franchise and rights of the retiring company all existing liabilities, responsibilities and obligations entered into by the retiring company. It must also be understood and agreed by the retiring company that it shall not be relieved or released from any contract or obligations entered into by it to the League, until all of said contracts and obligations have been fully paid and determined by that company, or the one accepting its membership, rights and franchises as its successor.

## Admission to Membership.

Sec. 5. A company to be admitted to membership in this League, except as provided in Section 7, must first deliver to the Secretary of the League a written application signed by its President and Secretary, accompanied by documents, showing that such company is regularly organized, chartered and officered, and is prepared
411 to comply fully with the provisions of Section 4 of this Constitution. Such application shall be transmitted at once by the Secretary to the Board of Directors, who shall immediately investigate and report upon said application to the League through the Secretary.

Sec. 6. The voting upon an application for membership shall be by ballot, a three-fourths affirmative vote being requisite for election.

## In Regard to Vacancies.

Sec. 7. In case a vacancy occurs in the membership of this organization during the championship season, the President shall nominate to all the clubs all applications for membership; and the vote thereon may be taken by telegraph or mail, as occasion may require, and a majority vote of all the clubs will be required to admit any applicant to membership. Such membership, however, shall continue only until the next annual meeting, but such club shall be subject to all the rules and requirements of this organization.

## Termination of Membership.

Sec. 8. The membership of any club may be terminated:

1. By resignation duly accepted by a three-fourths vote of all clubs in meeting duly convened as provided in Section 4.

2. By failure to present its team at the time and place agreed upon to play any championship game, unless caused by unavoidable accident in traveling, or conditions beyond the control of the club or its officials.

412 3. By allowing open betting or pool-selling upon its grounds or in any building owned or controlled by it.

4. By playing any game of ball with a club that is disqualified or ineligible under the National Agreement or this Constitution.

5. By offering, agreeing, conspiring or attempting to lose any game of ball; or failing to suspend immediately any player, or party connected with it, who shall be proven guilty of offering, agreeing, conspiring or attempting to lose any game of ball, or of being interested in any pool or wager thereon.

6. By disbandment of its organization or team during the championship season.

7. By failing or refusing to fulfill its contractual obligations.

8. By failing or refusing to comply with any lawful requirement of the Board of Directors.

9. By wilfully violating any provisions of this Constitution, or the legislation or playing rules made in pursuance thereof, or any violation of the provisions of the National Agreement.

## The Expulsion of Clubs.

Sec. 9. To carry into effect the provisions of Section 8 of this Constitution, the facts in any case covered by such section must be certified to the Secretary of the League, who shall at once notify by mail or telegraph the party charged with the specified default or offense, and inquire whether any dispute exists as to the facts alleged.

412½ In case the facts are disputed, the Board of Directors shall, after due notice, try the case under such regulations as it may prescribe; and its findings shall be final and conclusive on all parties except in case of expulsion, when such finding, with a transcript of the evidence, shall be forwarded to each club, which shall transmit to the Secretary its written ballot "For Expulsion" or "Against Expulsion"; and if seven clubs vote "For Expulsion" the forfeiture of membership by the party charged shall be valid and shall be forthwith promulgated.

Sec. 10. Upon conviction of any of the offenses prescribed in Section 8 as causes for expulsion, the Board of Directors may, in the first instance, as a preliminary to, or in lieu of expulsion, impose such a fine as is in its judgment commensurate with the offense; which fine may include a penalty to any other club or clubs as an equivalent for damages sustained for such violation of this Constitution, or of the legislation or contracts made in pursuance thereof.

## Sources of Revenue.

Sec. 11. The revenue of the League shall be derived from the following sources:

*a.* The balance, if any, remaining in the treasury on the 31st day of December of each year.

*b.* Annual dues to be paid on or before the first day of April of each year by each club to the Secretary, in the sum of $100.00.

*c.* Fines and penalties inflicted either by the League, Board of Directors, or the President against a club, club officer, manager,

player, or upon any other person in accordance with the pro-
413 visions of the Constitution and the Playing Rules of the League.

*d*. The proceeds of the sale of base balls by the League to its clubs under the contract entered into between the League and A. G. Spalding & Bros.

*e*. The amount received by the League under the contract entered into with A. G. Spalding & Bros.

*f*. Interest on deposits.

*g*. Income from all other sources.

*h*. The amount received by the League under the provisions of Section 17 of the Rules and Regulations governing the playing of the World's Series games during each year.

Operating Expenses.

Sec. 12. The operating expenses of the League, including the payment of salaries and expenses of officers and umpires, whether incurred by the League, the Board of Directors, or the President, shall be paid out of the League treasury, and if it is found at any time that the revenues under the provisions of Section 11 are insufficient to meet such expenses in any one year, then and in that event an assessment shall be levied by the President against each club, share and share alike, to meet such deficiency.

Officers—Vacancies.

Sec. 13. The officers of the League shall be a President, a Secretary-Treasurer and five members of the Board of Directors, who shall be elected by ballot at each annual meeting; provided,
414 however, that the President and the Secretary-Treasurer may be elected for a term of four years. It shall require five affirmative votes of the League to elect any officer, and all officers shall serve until their successors are elected and qualified, except as otherwise provided in this section. Any officer may be removed for cause by a four-fifths vote of the Board concurred in by at least six votes of the League. Should the office of President or Secretary-Treasurer become vacant by death, resignation or removal, the Board shall within thirty days thereafter elect his successor, who shall serve until the next annual meeting of the League. The Board shall also fill all vacancies in the Board caused by the removal of one of its members for cause; provided, however, that if a vacancy is caused by reason of death, resignation, or absence of any Directors, the club of which he was a member at the time he was chosen shall designate his successor and at once certify the same to the Secretary.

The President's Duties.

Sec. 14. The President shall preside at all meetings of the League, and he shall be ex-officio Chairman of the Board. He shall report to the Board any violation of the provisions of the Constitution

that may come to his knowledge, and he shall be the sole interpreter of the Playing Rules. In all cases of dispute or complaint relating to a game alleged to have been played in violation of this Constitution or the Playing Rules, the complaint and accompanying proof must be filed within five days after the date of said game with the President of the League, who shall send a copy of the same
415 to the other club, with orders to file its answer within five days thereafter. The President shall decide such dispute on its merits, and forthwith communicate his decision to both clubs, and his decision shall be final.

## The Secretary's Duties.

Sec. 15. The Secretary shall be the Treasurer of the League, and as such shall be the custodian of all funds of the League, receive all dues, fines, assessments and other sources of revenues, which shall be placed to the credit of the Treasurer in some bank of deposit to meet the current expenses of the League. He shall make such payments as shall be ordered by the President, the Board, or by the League, and render annually a detailed report of his accounts, and shall give such bond, with approved sureties, as the Board may require.

Sec. 16. The Secretary shall have the custody and care of the official records and papers of the League; shall cause a true stenographic record of all meetings of the League and of the Board to be kept and preserved; shall issue all official notices, attend to the necessary correspondence, prepare and furnish such reports as may be called for by the Board, and shall be entitled to such books, stationery, blanks and materials as the actual duties of his office may require.

Sec. 17. The Secretary shall keep a record of all infractions of the rules and regulations of the League that may come under his notice, and shall make a report on the same to the Board at its next meeting.

## 416 Officers' Salaries.

Sec. 18. The President and Secretary shall receive such salaries as the Board shall determine, and shall be reimbursed for all traveling and hotel expenses actually incurred by them in the service of the League; and the Board may exact from each such guarantee for the faithful performance of his duties as they may deem for the interest and safety of the League. At the expiration of his term of office each shall account for and deliver to the Board all the property and papers which may have come into his hands by virtue of his office.

## Qualifications of Directors.

Sec. 19. No person shall be qualified to act as Director who is not an actual stockholder of the club he represents; nor shall any club under any circumstances be represented by more than one

person on the Board; nor shall any Director sit in the trial of a cause in which his club is interested.

Sec. 20. The Board shall meet annually on the second Tuesday in December, at 12 o'clock noon, in the city where the annual meeting of the League is to be held, and may hold special meetings on the call of the President, or three members of the Board whenever necessity may require.

Sec. 21. The Board shall prepare a detailed report of all its doings, and present the same in writing to the League at its annual meeting, which report shall, if accepted, be filed with the Sec-
417 retary, together with all the official papers, documents and property which may have come into its possession, and a copy of such report shall be transmitted by the Secretary to each club.

Sec. 22. The Board shall have a general supervision and management of all the affairs and business of the League, including the awarding of the championship and such other duties expressly or impliedly conferred upon it by this Constitution, or by legislation made in pursuance thereof. It shall be the sole and exclusive tribunal for the trial of managers or players for any violation of this Constitution or of the Playing Rules, or Rules of Discipline, unless the League by a three-fourths vote of its club membership shall otherwise direct. It shall have the sole and exclusive jurisdiction to hear and determine disputes between clubs, complaints by a club against the manager or player of another club, or by a manager or player against his own club, or an appeal by a player against fine, suspension or expulsion by his own club, or complaint by the President of the League against a club for failure to comply with Constitutional requirements, or against a club official for conduct prejudicial to the best interest of the game, and generally for the adjudication of all issues of law or facts arising out of this Constitution, the Playing Rules and other legislation made in pursuance thereof.

Sec. 23. The Board shall, within ten days, either by mail or at a special meeting called for the purpose, hear and consider any com-
plaint made by the President of the League, or by one of its
418 clubs, charging a violation of Section 63 of this Constitution. The penalty for the first offense, if the charges are sustained, shall be $250; for the second offense, $500 and $1,000 for each subsequent violation.

Sec. 24. The Board shall adopt such regulations and such rules of procedure for the hearing and determination of all disputes and complaints brought before it as may be deemed necessary.

Sec. 25. The Board shall at once consider any complaint preferred by a club against a manager or player of another club during or after a championship season for conduct in violation of any provision of this Constitution, or prejudicial to the good repute of the game of base ball, and shall have power to require the club to which such player or manager may belong to discipline him, and upon repetition to expel him; provided, that such complaint be presented in writing, giving such particulars as may enable the Board to ascertain all the facts, and such particulars shall be transmitted to the

Secretary, by whom it shall at once be referred to the Board. In all cases where charges are preferred by any regularly appointed League umpire against any manager or player for violation of the playing rules or for conduct on the ball field prejudicial to the good repute of the game of base ball, the President shall have the sole jurisdiction to pass upon said charges and inflict penalties, if any, subject only to the restriction that in no case where expulsion is fixed shall the penalty be put into effect until ratified by the Board. Pro-
419 vided, that where such penalty carries with it suspension, the employing club shall stop payment of the offending manager's or player's salary during time of such suspension, for which deduction of salary no refund or reimbursement shall be made to the manager or player at any time or in any manner. Any club failing to deduct salaries as stipulated by the foregoing provision shall be fined $250 for each offense.

Sec. 26. In case a player, under contract with a League club, shall, during a current season, prefer a complaint in writing to the Secretary of the League against such a club, alleging that such club is in arrears to him for salary for more than fifteen days after such salary becomes due on account of such contract, the Secretary shall at once transmit to the said club a copy of such complaint, and require an answer thereto. On receipt of such answer, or if five days shall have elapsed without receipt of an answer, the Secretary shall refer the papers in the case to the Board for a speedy determination. Should the Board find the player's complaint sustained, it shall require the club, under penalty of forfeiture of its membership, to pay to the player forthwith the full amount ascertained to be due him. Provided, that should the player refuse to serve the club pending action by the Board on his complaint, and award will not be made until he returns to its services.

Sec. 27. The Board shall promptly hear an appeal made by any person who shall have been expelled, suspended or disciplined by his club, except in case of expulsion as provided in Section 40. Such person shall, within thirty days after the date of the expulsion,
420 suspension or discipline file a written statement of his defense, accompanied by a request that an appeal be allowed him. The Secretary shall notify the club of the request for an appeal, accompanying such notice with a copy of the appeal; and at the next meeting of the Board, the club, by its duly authorized representative, and the appellant in person, by attorney or by written statement, shall appear before the Board with their testimony. The Board shall impartially hear the matter and render its decision, which shall be final and forever binding on both club and player.

Section 28. Any player under contract or reservation who may consider himself unjustly treated or wronged by his club shall have the right to submit his case to the President of the League, who shall, after receiving evidence concerning the matter, present the same to the Board for hearing, recommendation or adjudication. The Board shall have authority to impose any just fine or pecuniary penalty on a club, a manager or a player, if warranted by its findings and decisions, and it may impose the expenses of trials and hearings on

one or both parties to the controversy. But such fine, penalty and expenses may be remitted by a three-fourths vote of the League upon appeal duly made and heard at an annual or special meeting.

Individual Club Control.

Sec. 29. Each club shall have the right to regulate its own affairs, except as herein otherwise provided, or as the League may from time to time determine, and, in doing so, shall have the right to establish its own rules and to discipline, punish, suspend or
421 expel its own manager, players or other employees, and these powers shall not be limited to cases of dishonest play or open insubordination, but shall include all questions of gross carelessness, indifference or other conduct of the player that may be regarded by the club as prejudicial to its interest, and not to conflict with any provision of this Constitution, or the Playing Rules of this League.

Punishment of Scandalous Conduct.

Sec. 30. The President of the League shall have power, upon proper proof, to suspend for a definite period and to impose a fine not exceeding $200 upon any League Manager or player guilty, in public, of gross misbehavior, including intoxication, fighting, quarreling, indecency or other scandalous conduct, whether on or off the playing field, during the season, when the same is, in his opinion, calculated to bring disrepute upon the National League or the National Game. Such fine, if the same has been fixed at the maximum amount, or suspension, if the latter is for a period of more than ten days, or both, can only be remitted or modified by the Board after a hearing upon appeal duly prosecuted.

Territorial Rights.

Sec. 31. This League shall have exclusive control of each city in its circuit and of the surrounding territory to the extent of five miles in every direction from its corporate limits, unless such city be represented in the Leagues. No outside National Agreement club shall be permitted to play exhibition games in such territory ex-
422 cept with the consent of the local major league club or clubs located therein.

Reservation of Players.

Sec. 32. Each club of this League shall be entitled to the right of reservation. On or before the 28th day of September in each year each club shall transmit to the Secretary a list of all players under contract on that day which such club desires to retain for the following season, together with those secured for future service by purchase or draft or while free agents, and those under suspension for insubordination or other cause as well as those ineligible for refusal to respect reservation by, or contract with, such club for that or a pre-

ceding season, or for any other valid reason. Such players shall be eligible to contract with any other club in this League except as hereinafter provided. No club shall have the right to reserve more than thirty-five (35) players, exclusive of its manager and ineligible players and no club shall have the right to retain more than twenty-one (21) players, exclusive of its manager and ineligible players from May 1st to September 1st. Provided, however, where the manager is also a player, he shall be included in the number of players. A player manager is one who participates in a championship game of baseball during the playing season.

Negotiating for Services.

Sec. 33. A player shall not enter into negotiations with any other club for services without the consent of the club with which he is under contract or reservation, nor shall any representative, manager, or agent of any club negotiate for the services of a player
423 of another club without the consent of the club having title to the player's services.

Contracts—Releases—Waivers.

Sec. 34. An informal contract between a club and its manager or players either by telegram or in writing must be followed within ten days thereafter by a contract, and all contracts, formal or informal, entered into between any club and its manager or player must be promptly forwarded to the President of the League for approval and promulgation.

Sec. 35. The League shall adopt such form of contract as may be prescribed by the National Commission for the protection of the rights of the parties thereto. All contracts must be approved by the President and duly promulgated by him. Whenever a club serves notice on a player that his contract will be terminated in ten days, it shall immediately notify by wire the President of the League, who shall at once notify the other seven clubs. A failure to comply with this provision shall subject the offending club to a fine, to be fixed by the Board, of not less than $25.00, unless a violation of this section results in the loss of the player to the National League, when it shall be at an amount commensurate with the player's ability as compensatory damages. For a period of ten days after notice of release is served on a National League player any other club shall have the right to claim without cost the player released and to negotiate for his services, and the player shall be ineligible to contract with a club of another league. A club desiring to release a player to a
424 club of another League shall apply for permission through the President of the League, who shall ask for waivers from the other seven clubs. Upon a failure to receive reply to such request within five days during the championship season and ten days at all other times, the President shall notify the requesting club that permission to release is granted. If any club shall refuse by mail or wire to waive claim, then the following rules shall apply:

1. Whenever waivers are sought upon a player the President of the League shall furnish, if required by the president of any club, definite information concerning the terms of said player's contract, his salary, and whether he is a drafted or purchased player, and if the latter, under what terms and conditions he was secured.

2. If the player sought to be released be a drafted player, then the price shall be fixed by the President of the League. Provided, however, that in no case shall the price be greater than the draft price. A player having served with one or more clubs of this League for the full playing season immediately following the year of his draft shall no longer be considered a drafted player.

3. For any other player (except a purchased player, as provided in paragraph 4 of these rules), the price shall be fixed by the President of the League, provided that the same shall not exceed fifteen hundred dollars ($1,500); proper consideration, however, to be given by the President to the terms and conditions in the player's contract.

4. If waivers are asked on a player who has been purchased within one year of the time in which such waivers are asked, and the
425 price offered by the claiming club or clubs is not satisfactory to the club requesting such waivers, then the same shall be adjusted by negotiations between the interested clubs, and, in the event of their inability to agree, by the President of the League, who shall then fix compensation to be paid in excess of the price offered, and whose decision shall be final, and the claiming club shall pay the amount fixed within five days.

5. No request for waivers can be withdrawn.

6. Refusal to waive must be followed by check, upon notification of the amount, to the President of the League.

7. Waivers secured between playing seasons expire ten days after the opening of the next championship season.

8. Waivers secured during the championship season expire thirty days after notice of request is promulgated by the President of the League.

9. No player shall be released during the five-day waiver period.

10. When the President of the League has awarded a player under the provisions of this section, the club to which he is awarded cannot withdraw its claim.

11. In case two or more clubs claim the services of the same player, the President of the League shall determine title by lot.

12. The President of a club, or his properly authorized representative, shall alone have authority to file a waiver claim.

13. If the club obtaining title to a player by refusing to
426 waive claim shall ask for waivers on the same player within thirty days after it secures title to him, the player shall revert, or claim, to the club to which he originally belonged, upon payment of the price paid for the player, and that club shall then have the privilege, for a period of ten days of disposing of the services of such player out of the League without further waiver requests. Provided, that if more than one club refused to waive in the first instance, all such clubs (except the one returning him) shall have the right to refuse to waive.

14. A club shall not release a player to a minor league club until waivers on his services have been obtained from all other major league clubs in accordance with the provisions of the National Agreement and the rules of the National Commission.

15. The penalty to be imposed by the Board of Directors for violation of any of the provisions of this section shall be not more than $250 for each offense.

Suspension and Expulsion of Players.

Sec. 36. Any manager or player, while under contract with, or reservation by, a League club, who shall, without the consent of such club, enter the service of any other club in any capacity, shall be liable to expulsion by said League club. Whenever a club suspends or expels a manager or player, that club shall at once notify the Secretary of this League, stating the date when the same takes effect, and the cause thereof.

Sec. 37. No manager or player, who has been suspended or expelled from a League club, shall at any time thereafter be allowed to
427 play with, or serve in any capacity, any League club (either the one expelling him or any other) unless the term of suspension by the club has expired, or upon his appeal to this League, such expulsion or suspension shall have been set aside.

Effect of Club Disbandment.

Sec. 38. The disbandment of a League club, or its withdrawal from or loss of League membership, shall operate as a release of its players from contract and reservations with said club, but the right to contract with and reserve said players shall revert to the League, and they shall be subject to transfer to such other clubs as the League may designate after notification to them of acceptance of their said services.

Sec. 39. No game of baseball shall be played between a League club and any other club that has been expelled from membership in this League, or not in good standing under the National agreement. No game of ball shall be played between a League club and any other club employing or presenting in its team a player expelled, or under suspension from the League, or otherwise rendered ineligible by this League or a club member thereof.

Crookedness and Its Penalties.

Sec. 40. Any person who shall be proven — of offering, agreeing, conspiring or attempting to cause any game of ball to result otherwise than on its merits under the Playing Rules, shall be forever disqualified by the President of the League from acting as umpire, manager or player or in any other capacity in any game of ball participated in by a League Club.

428 Umpires.

Sec. 41. A Staff of League umpires shall be selected by the President before the opening of the regular season.

1. Applicant for the position of umpire must state age, residence, experience, habits and such other qualifications, as may be prescribed on forms prepared by the President, and must have the endorsement of those who from skilled and personal knowledge can recommend the applicant for the position.

Independent of such endorsements, however, the President shall make inquiries and inform himself, as far as practicable, as to the merits and qualifications of each applicant.

2. Umpires shall be paid such salaries and allowed such expenses as may be mutually agreed upon by contract between them and the President, subject to the approval of the Board.

3. In the event of the failure of an umpire to umpire a game assigned to him it shall be the duty of the President to provide, if possible, a substitute to umpire such game; in such case there shall be deducted from the next payment to the umpire one day's pay for each assignment which for any reason he shall have failed to fill.

4. It shall be the duty of each League club to accept as umpire for any championship game such umpires or substitutes as the President shall assign to such games. In the event of the non-appearance of a League umpire or substitute at the hour appointed for the beginning of the game, each club captain shall then select one of the players of the opposing club, not on its batting list for that game, and the two players thus selected shall be the duly authorized um-
429 pires for that game.

5. It shall be the duty of umpires to enforce the rules as they are written, regardless of personal opinion as to their merits, subject to the President's instructions as to their proper interpretation. They shall familiarize themselves with these sections of the Constitution, obey all orders of the President, fill all assignments of their services, and wear such uniform on the playing field as he may designate.

Supervision of Umpires.

Sec. 42. All complaints against umpires shall be submitted in writing or by telegraph to the President, who shall take such steps as he may deem proper, according to the gravity of the charges, to ascertain the competency of the umpire complained of and to determine, if possible, by his own personal observation as to his merits or demerits. If a charge of a wilful violation of this Constitution, or of the Playing Rules, or for neglect or refusal to enforce any of said rules, or for improper or ungentlemanly language or conduct, either on or off the ball field, be substantiated upon investigation, the President shall have the right to fine, remove, suspend or expel the offender, as in his judgment the offense may justify.

## Committees.

Sec. 43. At each annual meeting of the League the President shall appoint a committee of three on Constitutional amendments and such additional committees as may be authorized by the League from time to time. He shall also appoint a committee of three on Playing Rules whenever the National Commission certifies to the President of each major league that in its judgment the Playing Rules require amending.

## The Championship.

Sec. 44. The Championship of this League shall be contended for yearly by the clubs composing it, under the official Playing Rules of Professional Base Ball Clubs, as adopted by the Joint Playing Rules Committee of the National and American Leagues.

Sec. 45. The President of this League in conjunction with the President of the American League shall jointly, in person as far as possible, settle conflicts in championship games in cities in which rival clubs are located. The schedules thus drafted shall be submitted to each major League not later than the second week in February of each year, and no alteration shall be made in any date or dates allotted therein without the concurrence of both major league Presidents.

Sec. 46. Every game played between two clubs from the commencement of the championship season to the completion of the championship series between such clubs shall be a game for the championship, and no League club shall lend to or exchange players with each other for any game played during the championship season. Any violation of this section shall subject each offender to a fine of $100.

Sec. 47. Each club shall play twenty-two or more championship games with every other club in the League. A tie game or a game prevented by rain or other legal cause, shall be played off on the same ground on which scheduled on any open date during the same or any subsequent series at a date optional with the home club, but no tie or postponed game shall be played off as a double-header in the first series; provided, that the date for playing off such postponed or tie game must be at once fixed by the home club, and the date so fixed shall then become part of the regular championship schedule and be bulletined to all clubs. The visiting club and President of the League shall be notified of such date before eight o'clock P. M. of the day such postponement or tie occurs; and in event the date for such play-off be fixed for the next day of the same series, the home club shall also notify the umpire or umpires then officiating in that city. If, however, all of the series of games scheduled on any ground have been ended, and any such game remains unplayed, then such game shall, if possible, be played off on the ground of the opposing club on a date to be determined by the club of the city to which such game be transferred.

Sec. 48. Each club shall have half of the championship series of games with every other club played on its own grounds, except as otherwise provided in Section 47; and in all the details of such games that do not involve the rights of the visiting club under this Constitution and the Playing Rules, but relate solely to such games as attractive exhibitions to the patrons of the home club, the visiting club shall defer to the wishes of the home club; provided, nevertheless, that the home club shall not be permitted to change the usual hour for the commencement of scheduled games in its particular city more than thirty minutes without first having ob-
4:32 tained the consent of the visiting club thereto, under a penalty to the visiting — of $500. The visiting club shall furnish to a person designated by the home club the batting order of its team by 10 o'clock on the morning of the day of each game, or the evening previous, if requested. In case of the failure of any visiting club to furnish the batting order of its team as herein stipulated it shall forfeit the sum of $10, which amount shall be immediately transmitted to the Secretary of the League, upon the receipt of notice from him of the infliction of such fine, which notice shall be given by the Secretary upon receipt of complaint from the home club. It shall be the duty of the home club to furnish the manager and captain of the visiting club with a list of the batting order of its team before the commencement of the game under similar penalties or default as herein prescribed. The visiting club shall have the right to practice its team on the grounds of the home club between 11 and 12 o'clock A. M. on each day of its visit during the championship season.

## The Championship Schedule.

Sec. 49. All championship games shall be arranged by the President or his proxy as provided in Section 2, Article III, of the National Agreement in a written schedule and reported to the League before the beginning of the championship season. The schedule shall provide for an equal number of return games, and shall specify the date of each game and the date of each series of games. No date in said schedule shall subsequently be changed, except (1) by written agreement of the two clubs from a date fixed by the schedule for a game between such clubs in a city in which a rival major league is not operated to an open date on
4:33 the same ground; or (2) as provided in Section 47.

Any club or clubs violating this section shall be amenable to a penalty of $1,000, to be paid within forty-eight hours to the Treasurer of the League, or if not so paid to be withheld from any funds to the offending club or club's credit in the hands of the Treasurer. All games played in violation of this section shall not count in the championship series.

## The Admission Fees and Receipts.

Sec. 50. The general admission fee to all championship games shall be fifty cents, but each club shall designate a part of its

grounds, and provide seats thereon, the admission fee to which shall be twenty-five cents. All division of percentage shall be made on the basis of fifty cents, except as to that part of the grounds the admission fee to which is fixed at twenty-five cents, and as to such part of said grounds all divisions of percentage shall be on the basis of twenty-five cents.

At the conclusion of each championship game the home club shall deliver to the representative of the visiting club and transmit by mail to the President or other designated officials of the visiting club a detailed statement of the receipts of said game, which must include all fifty-cent and twenty-five-cent admissions, and shall pay to the visiting club fifty per centum of said receipts.

## The Ball Park.

Sec. 51. Each park shall be provided with a sufficient number of exits and entrances for the accommodation of the public, and a separate entrance shall be maintained for the convenience
434 of the press representatives and those entitled to the courtesies of the grounds.

1. Additional entrances may be opened upon holidays, provided the visiting clubs shall be given at least ten days' notice of the whole number and their locations.

2. Emergency gates may be opened at any time by consent of the visiting club.

3. Each park shall be provided with proper and suitable dressing room or rooms for visiting players, supplied with toilet conveniences, hot and cold water, and shower baths, and twenty suitable lockers for such players. Such dressing rooms shall be properly heated and cared for, and made subject to the control during their occupancy thereof, of the players of the visiting club. The penalty for failure to provide and maintain such dressing rooms in accordance with this section shall be $25 for each day of violation of any or all of these provisions, the same to be assessed and collected by the Secretary of the League upon complaint of the visiting club.

4. A visiting club shall not be permitted to convey its players to or from the grounds of any other club in uniform unless special permission therefor has been first granted by the President of the League, or some great emergency arises to warrant it. A violation of this rule shall be punishable by the infliction of a fine of $50 for each day the rule is violated.

## The Turnstile Count.

Sec. 52. The number of persons admitted to the grounds
435 shall be determined by the use of the necessary number of self-registering turnstiles, the arms of which shall extend within four inches of a dividing partition. The keys of these turnstiles shall be delivered before the opening of the grounds for each game to the agent of the visiting club, who shall have full access to such turnstiles. The box of such turnstiles shall not be removed

until after the close of the seventh inning, and in case a carriage gate is used a ticket for each person admitted through such gate shall at once be delivered to the agent of the visiting club. The visiting club shall have the right to accept the turnstile count at each game or to count all tickets. Each club shall be required to use admission tickets, with rain checks attached which have been approved by the League. At the conclusion of each game the visiting club shall be furnished a copy of the ticket sale statement.

### Special Entrance.

Sec. 53. No person shall be admitted free to a championship game, except players and officers of contesting clubs, umpires, policemen in uniform, necessary employes of the home club, representatives of the press and such invited guests as the President of the home club may deem proper to recognize, all of whom must pass through a self-registering *tur*nstile at the special entrance provided for the press. Said turnstile shall be subject to the same right of inspection by the visiting club that is provided in all other entrances. It shall be the duty of the President of the League to inspect all ball parks from time to time, and to report to the Board any failure to
436 comply with this or any other section of the Constitution.

### Stopping Play to Catch Trains.

Sec. 54. On any day when either club is required to leave a city in order to reach the next city, where it is scheduled, in time to play its next game at the customary hour, the home club shall be compelled, upon proper notice by the visiting club, to begin the game three hours and a half before the time of the departure of the last train on which either club can reach its next scheduled point in time; and either club may leave the field at any time within one hour of said train time without forfeiting any rights or privileges, after five innings on each side have been played, the umpire to be the sole judge of the time.

### Rain Checks.

Sec. 55. In the event of a game being stopped by rain or declared forfeited before the required number of innings to make it a legal game have been played under the provisions of the rule 27 of the Playing Rules, rain checks shall become valid and exchangeable at any time during the current season, and the visiting club shall not be entitled to its percentage of receipts.

### Forfeited Games.

Sec. 56. A club shall be entitled to forfeited games—to count in its series as games won by a score of nine runs to none—in case where the umpire in any championship game shall award the game to such club on account of the violation by the opposing club of

any section of this Constitution or of any Playing Rules. In
437 the event of a forfeiture for any reason, the forfeiting club shall incur such penalty not exceeding $1,000 as may be imposed by the Board after a hearing held within one week from the date of such game, and any damages suffered by the non-offending club shall be paid out of such penalty. In addition to the penalty of the offending club, the captain or manager, or person in charge of the offending team and responsible for the team leaving the field, shall incur a fine of $100, which shall be paid within five days to the Secretary of the League, said penalty not to be remitted under any circumstances. In case such penalties are not paid within the time prescribed in this section, the club, manager, or player penalized cannot participate in a championship game.

## Drawn Games.

Sec. 57. Drawn, tie and postponed games shall not count in a series as games, but must be played off, if possible, as provided in Section 47. Such games, if drawn or tied shall be included in the official batting, fielding and pitching averages. If they cannot be played off, as herein provided, they may subsequently be played off, if sufficient time exists before the close of the season. Double games for one admission shall not be permitted unless previously scheduled as such or rendered compulsory by the playing off of postponed games, as provided in Section 47.

## Winning the Pennant.

Sec. 58. The club which shall have won the greatest per-
438 centage of games in all its championship series shall be declared the champion club of this League for the season in which such games were played. In the event that two or more clubs shall have won the same percentage of games during the championship season, the Board shall at once arrange a special series of three games between such clubs, to be played at the close of the championship season, and the games so played shall be included in the championship record, and counted in determining the award of the championship. In such case only the provisions of this Constitution prohibiting the playing or recording as championship games, of games played after the expiration of the championship season, shall have no effect. The emblem of the championship shall be a pennant of the National Colors, to cost not less than $100, inscribed with the motto, "Champion Base Ball Club of the National League," with the name of the club and the year in which the title was won. The champion club shall be entitled to fly the pennant until the close of the ensuing year.

## Deciding the Championship.

Sec. 59. The championship shall be decided in the following manner: Within twenty-four hours after every game played for the championship, the official scorer of the home club shall prepare and forward to the Secretary of the League a statement containing the

full score of the game, according to the system specified in the Playing Rules, together with date, the place where played, the names of the clubs and umpires; provided that no tie or drawn game shall be considered a game for any purpose except in compil-
439 ing the individual and team averages; provided further, that in any case the Secretary shall not receive the score of a championship game within five days after the playing of such game, the club whose duty it is to forward such score shall pay to the League the sum of $2 as the penalty of such default. At the close of the season the Secretary shall prepare a tabular statement of the games won and lost by each club, according to the reports so sent him, which shall be the sole evidence in the matter, and submit the same, with the statement so sent him, to the Board, which shall make the award in writing, and report the same to the League at its annual meeting.

In making the award the Board shall consider:

1. The tabular statement of the Secretary.

2. Forfeited games.

3. Games participated in by clubs which have withdrawn or forfeited their membership without completing their championship series with all other league clubs. Such games shall be counted to the following extent:

The Board shall ascertain the least number of championship games played by such retired club with any club remaining in the League, and shall from the first game participated in during the championship series by such retired club, count in the series of each league club a similar number of games, and all other games participated in by and with such retired club, shall not be counted in the championship series; provided, that if such retired club shall have failed to play at least one championship game with every league club, all games participated in by it shall be thrown out entirely.

440 Meetings.

Sec. 60. The annual meeting of the League shall be held on the second Tuesday in December of each year at two o'clock P. M. in New York City. Adjourned sessions of the annual meeting may be held at other places and at such times as shall be determined by resolution of the National League or its Board from time to time. The schedule meeting shall be held annually in New York City on the second Tuesday in February.

Sec. 61. Special meetings may be called by the President of the League and on the written call of six clubs or a majority of the Board, at such times and places as they may from time to time, determine.

Club Representation.

Sec. 62. At every meeting each club shall be entitled to two representatives, and to have in addition thereto any of its officers or ex-officers present; but no club shall be permitted to send as a representative a person under contract or engagement to it as a ball player or manager. If requested by any other club representative, a repre-

sentative shall present a certificate of appointment duly attested by at least two officers of his club showing his authority to act, but no club shall have more than one vote, and provided further, that no club shall be represented by any person or persons who have been found guilty by this league of any act bringing into disrepute the National League, or the National Game.

441

Executive Session.

Sec. 63. The League may, upon a majority vote of its members, go into executive session for the transaction of its business, and during such session no club shall be entitled to more than two representatives. A fine shall be imposed by the Board upon any club whose representative or representatives make public the subject-matter of executive proceedings.

Quorum.

Sec. 64. A representation of a majority of clubs shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time until a quorum is obtained. When obtained a quorum may be maintained by locking the doors of the meeting room, the appointment of doorkeepers and such other procedures usual in parliamentary bodies to maintain quorums and dispatch business.

Order of Business.

Sec. 65. The following shall be the order of business unless suspended by a three-fourths vote of the club members:

1. Reading minutes of last meeting.
2. Report of Board of Directors.
3. Report of Committees.
4. Report of President.
5. Election of New Members.
6. Election of Officers.
7. Amendment of Constitution.
8. Consideration of playing rules.

442

9. Miscellaneous Business.
10. Adjournment.

Amendments.

Sec. 66. Sections 3, 8, 9, 31, 40, 50 and 66 shall not be altered or amended at any time, except by a unanimous vote of all of the clubs of the League. All other sections may be altered or amended by a three-fourths vote of the League at any annual meeting or adjourned session thereof, or by a unanimous vote at any other time; provided further, that any section may be suspended and rendered non-applicable, except the sections herein referred to, by a three-fourths vote of the League at any annual meeting or adjourned session thereof, or by a unanimous vote at any other time. Provided, however, that no amendment to this constitution shall be made unless the proposed

amendment, in writing, is filed with the Secretary at least fifteen days before a meeting at which it is to be considered and a copy thereof sent by registered mail to each club owner at least ten days before such meeting.

At the call of counsel for plaintiff, the defendants thereupon produced, and there was offered and received in evidence, on behalf of plaintiff, contract between the Western Union Telegraph Company and the National League of Professional Baseball Clubs, dated March 19, 1913, and reads as follows:

This agreement made and entered into this Nineteenth day of March, 1913, by and between the Western Union Telegraph
443 Company, of the first part, and the National League of Professional Base Ball Clubs, of the second part, hereinafter respectively designated for convenience as the Telegraph Company and said League,

Witnesseth:

That the Telegraph Company agrees to establish and maintain during the continuance of this agreement, direct telegraphic connection between its lines and the grounds of said League's Clubs in or near the cities of: New York and Brooklyn, N. Y.; Boston, Mass.; Philadelphia and Pittsburgh, Pa.; Chicago, Ill.; Cincinnati, O.; and St. Louis, Mo.; and the Telegraph Company agrees to open a telegraph office in the location hereinafter mentioned on each of said grounds and to furnish operators and keep said office open for the transaction of its regular business and the transmission of reports of games during such times as the regular League and World Series games are being played in said grounds respectively and to furnish each of said clubs, while playing on its own grounds, the scores by innings of all National League and American League games then being played in other cities and to furnish also to the office of each of said Clubs, if desired and if practicable, reports of baseball games by ticker service, where the telegraph Company has such service.

The Telegraph Company further agrees to pay to said League during each year of the continuance of this agreement the sum of Eighteen Thousand ($18,000) Dollars, the same to be in full payment to said League, and to the above mentioned Clubs of said League,
444 for space, grants, rights and privileges to the Telegraph Company provided for herein, the said payment of Eighteen thousand ($18,000) Dollars to be made in quarterly installments of Four thousand Five hundred ($4,500) Dollars, by check drawn to the order of said League and to be mailed to the President thereof.

In consideration whereof said League and the above mentioned clubs thereof hereby agree to file, or cause to be filed, with the Telegraph Company, party hereto, for transmission over its lines all telegrams on the business of said League and of said Clubs and the League agrees to pay, and to cause each Club thereof to pay, in cash, to the Telegraph Company its regular current commercial rates thereon, the League and each Club to pay at its home office for said telegrams, and the League hereby guarantees the said payments. If desired by the League or any of its Clubs, said services may be performed as a matter of convenience under Identification Cards to be issued by the Telegraph Company on application of the President of

said League, or of any of said Clubs, whose applications may be approved by the President of said League.

Said League further agrees to furnish and set apart suitable and necessary space for the occupancy and use of the Telegraph Company as an office in a location convenient of access to the public in each of said Clubs' main buildings within said grounds.

Said League further grants the Telegraph Company the Exclusive right of way upon and through each of said grounds for the construction of a line of wire or wires, provided the same shall
445 not in any manner interfere with the use of the grounds for base ball purposes; and the League agrees to admit the Telegraph Company's employes to each of said grounds free of charge when engaged in the transaction of its business and in the construction and maintenance of said line; and as a further consideration said League hereby grants and assures to the Telegraph Company the sole and exclusive right and privilege of establishing, maintaining and operating a telegraph office and line and transacting telegraph business within and upon the grounds of each of said clubs or any part thereof, and of reporting and transmitting reports of games and other events therefrom, and said League agrees to give to the Telegraph Company exclusively all the Telegraph business originating in each of said grounds so far as the League and each of said Clubs may be able to control such business, and that neither it nor its assigns or tenants nor any of its Clubs, will occupy or use, or allow any other party or parties to occupy or use, any part of any of said grounds or any buildings thereon in competition with the Telegraph Company during the continuance of this agreement without the consent of the Telegraph Company party hereto; "provided however that the Telegraph Company shall not furnish details of any Base Ball game to subscribers in any city in which such game is being played, at the time or during the progress of the game", and provided further that nothing herein contained shall interfere with or in any way abridge the right of any Club to have and maintain the Club's usual telephone instruments within its grounds for its
446 own use in its own business.

The provisions of this agreement shall be and continue in force for and during the terms of five (5) years from the first (1st) day of January, 1913, to the first (1st) day of January, 1918, but may be terminated on said last named date on written notice, given by either party to the other, sixty (60) days prior thereto; in case no such notice be given, this agreement shall continue after the close of said term, from year to year, unless either party to this agreement shall give sixty (60) days' notice in writing prior to the thirty-first (31st) day of December, in any year after 1917 of its intention to terminate the same.

Provided however that at the end of three (3) years that is, on or about December 31st, 1915, the question of increased compensation to the League and its Clubs, may be brought up by the League if desired with the view of making any readjustment in the amount payable hereunder after the end of said three (3) years, that may be mutually agreed upon by the parties hereto.

This agreement supersedes all previous agreements between the Telegraph Company and said League and any and all of said Clubs.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
By G. W. E. ATKINS,
*Vice-President.*

WM. H. BAKER,
*Secretary.*

THE NATIONAL LEAGUE OF PROFESSIONAL BASE BALL CLUBS,
By T. J. LYNCH,
*President.*

JOHN A. HEYDLER,
*Secretary.*

447 The foregoing agreement is hereby approved, accepted, ratified and confirmed by the undersigned, who hereby agree to observe and carry out the same in all respects as therein set forth, each with respect to its own grounds and buildings.

BROOKLYN BALL CLUB,
OF BROOKLYN, N. Y.,
By CHARLES H. EBBETTS, *President.*
NATIONAL EXHIBITION COMPANY,
OPERATING THE NEW YORK BASE BALL CLUB,
By H. N. HEMPSTEAD, *President.*
BOSTON NATIONAL LEAGUE BASEBALL COMPANY,
OF BOSTON, MASS.,
By JAMES E. GAFFNEY, *President.*
PHILADELPHIA BALL COMPANY,
OF PHILADELPHIA, PA.,
By W. H. LOCKE, *President.*
PITTSBURGH ATHLETIC COMPANY,
OF PITTSBURG, PA.,
By BARNEY DREYFUSS, *President.*

L. H. CONTANS, *Secretary.*

CHICAGO NATIONAL BASE BALL CLUB,
OF CHICAGO, ILL.,
By CHARLES W. MURPHY, *President.*
CINCINNATI EXHIBITION COMPANY,
OPERATING THE CINCINNATI BASEBALL CLUB, OF CINCINNATI, O.
By AUG. HERRMANN, *President.*
AMERICAN BASEBALL AND ATHLETIC EXHIBITION COMPANY,
OPERATING THE ST. LOUIS NATIONAL BASEBALL CLUB, OF ST. LOUIS, MO.,
By S. P. BRITTON, *President.*

At the call of counsel for the plaintiff, defendants thereupon produced, and there was offered and received in evidence, on
448 behalf of plaintiff, contract between the National League of Professional Baseball Clubs and A. G. Spalding & Bros., dated February 16, 1911, which reads as follows:

Agreement made this 16th day of February, 1911, by and between The National League of Professional Base Ball Clubs, hereinafter called the "League", party of the first part, and A. G. Spalding & Bros., a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, party of the second part, witnesseth:

That for and in consideration of the sum of one dollar by each of the parties above named to the other in hand paid, the receipt whereof is hereby acknowledged, and of other good and valuable considerations to each from the other moving, and in further consideration of the faithful performance of all the covenants and agreements hereinafter set forth to be kept and performed by the respective parties hereto, the said parties hereto do hereby mutually covenant and agree to and with each other as follows:

The said A. G. Spalding & Bros., do hereby agree to furnish and deliver to the said League, or to such officer or club thereof as the said League's president shall designate to them in writing, for distribution only to and among the clubs, persons, firms or corporations who are or shall be members of, or who comprise or shall comprise the said League, every year during the continuance of this agreement, or of any renewal or extension thereof, all the
449 balls used by the several clubs of the said League, for which balls the League shall pay the market club price charged by A. G. Spalding & Bros. for such balls, it being understood that the said price shall not exceed fifteen dollars ($15.00) per dozen net cash, and that the price of fifteen dollars per dozen is the price now agreed upon, and is not to be changed excepting in the event of A. G. Spalding & Bros. contracting with some other League or Leagues for a lower price, or making sales of their balls to other clubs at a lower price in which case, they, the League, are to be made and receive the same price as such other Leagues, clubs or purchasers. All purchases are to be made through the office of the President of the League, and all goods to be delivered on his written order.

And the said League for itself and its successors or assigns does hereby covenant and agree with the said A. G. Spalding & Bros. that it shall and will notify all of the clubs, persons, firms or corporations who are or shall be members of, or who are or who shall comprise the said League, that all base balls which they, or any of them, shall or may require during the continuance of the term of this agreement, or of any renewal or extension thereof, must be procured from the said League or its authorized representative as above stated, and that the Standard ball for use in the playing of games of base ball between the members of the aforesaid League shall be the Spalding "Official National League" ball as aforesaid; and the League does hereby further covenant and agree that so long as this agreement

remains in force, and during any renewal or extension
450 thereof, it will not in any manner endorse or recommend to be used by any of its clubs or members any other base ball, or any base ball manufactured or sold by any person, firm or corporation other than the Spalding "Official National League" ball sold by the said A. G. Spalding & Bros., whose ball alone shall be the official ball of the League and shall be used exclusively by it during the entire period of this agreement in all games and for all practice.

This contract is executed with the League on the basis of its being a major corporation. The status of this contract shall not in any way be altered by the reduction of the members of the League or the increase of its members, but this contract shall become null and void if, during the time named herein, the League should become disrupted, or disband, or fail to continue as a major organization in the conduct of organized base ball.

It is also understood that the Official Playing Rules of the League shall name the Spalding ball and the ball adopted by the American League of Professional Base Ball Clubs as the only balls that shall be recognized in its rules as official.

It is further understood and agreed that the said A. G. Spalding & Bros., its successors or assigns, will pay to the said League the sum of four hundred thousand dollars ($400,000) in forty equal payments of ten thousand dollars ($10,000) each, the said sums to be paid semi-annually, ten thousand dollars each on the fifteenth days of April and September, respectively, for the entire term of this agreement.

451 It is further understood and agreed that this agreement shall continue in force for the period of twenty years from the sixteenth day of February, A. D. 1911, during which time the said A. G. Spalding & Bros. shall guarantee the quality of the ball, and that the standard of the same shall always be maintained; and A. G. Spalding & Bros. further guarantee that the quality and standard of the ball shall always be equal to any ever heretofore made or furnished by them to the League.

t In witness whereof The parties hereto have duly executed these presents the day and year first above written.

NATIONAL LEAGUE OF PROFESSIONAL BASE BALL CLUBS,
As the "League," T. J. LYNCH,
*President.*

Witness,
JOHN A. HEYDLER,
*Secretary & Treasurer.*

A. G. SPALDING & BROS.,
By J. W. CAWKINS,
*2nd Vice President.*

Attest:
JAMES M. CARRINGTON,
*Secretary.*

At the call of counsel for the plaintiff, defendants thereupon produced, and there was offered and received in evidence, on behalf of plaintiff, contract between the American League of Professional Baseball Clubs and A. J. Reach Company, dated April, 1912, which reads as follows:

This agreement made and entered into on this — day of April, 1912, by and between the American League of Professional
452 Base Ball Clubs, hereinafter called "League," party of the the first part, and A. J. Reach Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, hereinafter called "Company," party of the second part,

Witnesseth, that,

Whereas, the parties hereto did heretofore enter into a contract on February 16th, 1910, for the purpose of providing conditions, under which the "Company" would enjoy the exclusive right and privilege of manufacturing and furnishing the "League" with base balls, with which all the practice and official games of the "League" would be played; and,

Whereas, the parties hereto did, on January 6th, 1912, enter into another agreement for substantially the same purposes and intents, as set out in said contract of February 16th, 1910; and

Whereas, each of said contracts was to be operative during the same period of time, and certain ambiguities and inconsistencies now exist in said contracts.

Now, therefore, in order to obviate and reconcile any and all ambiguities and inconsistencies which exist, or may exist, in said contracts, and in order to more specifically set out the reciprocal rights and obligations of the parties hereto, for valuable considerations flowing from one to the other, and in further consideration of the faithful performance of all the covenants, hereinafter set forth, to be kept and performed, the parties hereto do herby mutually covenant and agree to and with each other as follows:

453 First. The said contracts of February 16th, 1910, and January 6th, 1912, are hereby canceled and terminated.

Second. The "Company" agrees to furnish and deliver to the "League" or to such officer or club thereof as the said "League's" president shall designate to it in writing, for distribution only to and among the clubs, persons, firms or corporations who are or shall be members of, or who comprise or shall comprise the said "League," every year during the continuance of this agreement, or of any renewal or extension thereof, all the balls used by the several clubs of the said "League," for which balls the "League" shall pay the market club price charged by the "Company" for such balls, it being understood that the said price shall not exceed fifteen dollars ($15.00) per dozen net cash.

Third. The "League," its successors and assigns, agrees that it shall and will notify all the clubs, persons, firms or corporations who are or who shall be members of, or who are or who shall comprise the said "League," that all base balls which they, or any of

them shall or may require during the continuance of the term of this agreement, or of any renewal or extension thereof, must be procured from the "League," or its designated representative, as above stated, and that the standard ball for use in the playing of games of base ball between the members of the aforesaid "League" shall be the Reach "Official American League" ball, as aforesaid: and the "League" does hereby further covenant and agree so long as this agreement remains in force, and during any renewal or
454 extension thereof, it will not in any manner endorse, recommend or permit to be used by any of its clubs or members of any other base ball, or any base ball manufactured or sold by any person, firm, or corporation other than the Reach "Official American League" ball, sold by the said A. J. Reach Company, whose base ball alone shall be the official base ball of the "League," and shall be used exclusively by it during the entire period of this agreement in all official games and in all practice games, and no other firm, person, partnership or corporation, shall, during the duration of this contract, have the right to vend or advertise any base ball as the "Official American League" ball, and the "League" will use its utmost efforts and endeavor to assist and protect the "Company" in the preservation of said exclusive right to furnish it and to supply the public with the "Official American League" ball.

Fourth. This contract is executed with the "League" on the basis of its being a major organization. The status of this contract shall not, in any way, be altered by the reduction of the members of the "League," or the increase of its members, but this contract shall become null and void if, during the time named herein, the "League" should become disrupted, or disband, or fail to continue as a major organization, as the term "major organization" is generally understood by those professionally engaged in the base ball business, in the conduct of organized base ball.

Fifth. The Official Playing Rules of the "League" shall name and designate the Reach ball and the ball adopted by the National
455 League of Professional Base Ball Clubs, as the only balls that shall be recognized in its rules as official.

Sixth. The "Company", its successors and assigns, shall pay the "League" the sum of Twenty Thousand Dollars ($20,000.00) each on the 15th day of April and on the 15th day of September, respectively, during the period of this agreement.

Seventh. This agreement shall be considered as operative and in full force as of January 6th, 1912, and shall continue in full force and operative for the period of nineteen (19) years from said date, during which time the "Company" further guarantees that the quality and standard of its base ball shall always be equal to any heretofore made or furnished by it to the "League".

In witness whereof, the parties hereto have duly executed these presents, through their proper and authorized officers, on the date first above written.

A. J. REACH COMPANY,
By A. J. REACH,
*President.*

Attest:
THOS. S. SHIBE,
*Secretary.*

THE AMERICAN LEAGUE OF PROFESSIONAL BASE BALL CLUBS,
By B. B. JOHNSON,
*President.*

This is to certify that at a regular meeting of The American League of Professional Base Ball Clubs, B. B. Johnson, Esq., was duly and regularly authorized by said organization, The American League of Professional Baseball Clubs, to sign and execute the above agreement.

B. B. JOHNSON,
*Secretary of the American League of Professional Base Ball Clubs.*

456 Thereupon counsel for the Defendants, Mr. Pepper, made the following statement in open Court:

"I would like to say, while I am on my feet, may it please the court, that Mr. Douglas has requested, very properly, the production of the list of so-called non-reserve players in the minor leagues. I find upon investigation that I was wrong in my impression respecting the reserve clause. I stated, or implied, during the examination or cross examination of the plaintiff's witnesses, that the reserve clause was present only in major league contracts, and Mr. Goldman very properly called attention to the fact that under the rules of the National Association minor league contracts also must have the reserve clause, unless its insertion was dispensed with by a certain central authority, and in that event lists of non-reserve contracts were to be filed with the secretary of the National Commission. On investigation I find that no such lists have been filed, and therefore presumably the minor league contracts had the reserve clause in them. That is a misapprehension of counsel which I am glad to correct. May I ask, through you, Mr. Douglas, whether that is a satisfactory response to your inquiry?

Mr. Douglas: Yes, I think so.

Mr. Pepper: I thank you."

457 Thereupon the plaintiff offered and there was received in evidence the Thirteenth Annual Report of the National Commission for 1917, from which was read the following:

At the meeting of the National Commission, held in Cincinnati in December, 1904, it was unanimously decided to issue annually a

complete report of its proceedings, in order that every one interested in base ball may be enabled to keep in touch with the proceedings of the Commission.

Twenty-five copies of these reports will be sent each year to the President of the National League, to the President of the American League and the President of the National Association for distribution. In order to help defray the outlay of the Commission in the cost of these reports, the remaining copies (including preceding Annual Reports) will be sold at $1.00 per copy, upon application to John E. Bruce, Secretary, Masonic Temple, Cincinnati, Ohio.

Copies of the National Agreement can be secured for twenty-five cents each.

B. B. JOHNSON,
JOHN K. TENER,
AUG. HERRMANN,
*Chairman, National Commission.*

JOHN E. BRUCE,
*Secretary.*

*Revised Bulletins Pertaining to Major League Optional Players of* 1916. *And Major League Reserved Players for* 1917. *With Financial Statements Relative Thereto.*

The National Commission hereby Issues a Bulletin Containing:

(A) List of Major League players released to Minor League
458 Clubs, subject to option to recall on August 15, 1916.

(B) Supplemental list of Major League players released to Minor League Clubs with option to recall on August 15, 1916, together with list of players recalled by Major League Clubs under optional agreements.

(C) List of players released for a consideration to Major League Clubs by Minor League Clubs under approved agreements since close of drafting season of 1915 and before commencement of drafting season of 1916, under agreements other than optional agreements, filed with and approved by the National Commission.

(D) List of 1916 players awarded to Major League Clubs by selection.

(E) Statement showing money expended by Major League Clubs for players, agreements for whose purchase have been filed with and approved by the National Commission for the year 1916.

(F) Statement showing money expended by Major League Clubs for drafted players in 1916.

(G) Players reserved by National League Clubs.

(H) Players reserved by American League Clubs.

* * * * * * *

Financial Report, World's Series, 1916.

Receipts.

| | | | |
|---|---|---|---|
| Sept. 25 | —Deposit Moving Picture Privilege | | $2,500.00 |
| Oct. 9 | —" J. J. Lannin | | 10,000.00 |
| 11 | —Chas. H. Ebbets | | 10,000.00 |
| 7 | —1st game receipts, Boston grounds | | 76,489.50 |
| 9 | —2nd game receipts " " | | 82,626.00 |
| 459 | | | |
| 10 | —3rd game receipts, Brooklyn grounds | | 69,762.00 |
| 11 | —4th " " " " | | 72,840.09 |
| 12 | —5th " " Boston " | | 83,873.00 |

Refunds.

| | | | |
|---|---|---|---|
| Oct. 21 | —From Umpire Byron (transportation) | $9.05 | |
| 23 | —" " Orth | 10.00 | |
| 24 | —" " O'Day | 4.50 | |
| 30 | —" " Hildebrande | 10.00 | |
| 30 | —" " Byron (Hotel expenses, two days) | 10.00 | |
| 31 | —World's Series Umpires Tickets | 16.00 | |
| | | | 59.55 |
| | Total | | 408,150.05 |

Disbursements.

| | | |
|---|---|---|
| Oct. 16 | —The Ansell Ticket Co., Printing | 105.00 |
| 17 | —Henry O'Day, expenses | 99.60 |
| | Thos. H. Connolly, expenses | 62.75 |
| | Henry O'Day, Umpire Compensation | 1,000.00 |
| | Thos. H. Connolly, Umpire Compensation | 1,000.00 |
| | E. C. Quigley, Umpire Compensation | 1,000.00 |
| | Wm. Dinneed, Umpire Compensation | 1,000.00 |
| | Leroy D. Reeves, Business Rep. | 500.00 |
| | Wm. Harridge, Business Rep. | 500.00 |
| | John K. Tener, Compensation | 250.00 |
| | B. B. Johnson, Compensation | 250.00 |
| | John E. Bruce, Compensation | 250.00 |
| | August Herrmann, Compensation | 250.00 |
| | A. J. Flanner, Compensation | 250.00 |
| 19 | —John E. Bruce, for Umpire Tickets | 144.00 |
| | A. J. Flanner, Sundry Expenses | 1.60 |
| | Boston A. L. B. B. C. Moving Picture Priv. | 833.33 |
| | Boston A. L. B. B. C. Rental Boston Grds. | 1,200.00 |
| | Boston A. L. B. B. C. Music | 600.00 |
| 460 | | |
| | Boston A. L. B. B. C. Amount paid by Commission for Rental Boston Grounds | 300.00 |

| | | |
|---|---|---|
| | Boston A. L. B. B. C. Brooklyn Club's share Rental Braves Field, Boston | 750.00 |
| | 20—Brooklyn, N. L. B. B. C. Moving Picture Priv. | 833.33 |
| | August Herrmann, Incidental Expenses | 95.71 |
| | Wm. Carrigan, Manager, Boston Players | 97,156.47 |
| | J. J. Lannin, President, Boston A. L. Club Share | 69,039.00 |
| Oct. | 20—J. J. Lannin, President Special Deposit | 10,000.00 |
| | B. B. Johnson, A. L. Share | 23,013.00 |
| | Wilbert Robinson, Mgr. Brooklyn Players | 64,570.98 |
| | Chas. H. Ebbetts, Brooklyn's Share | 68,289.00 |
| | Chas. H. Ebbetts, Special Deposit | 10,000.00 |
| | John K. Tener, N. L. Share | 23,013.00 |
| | 23—Brooklyn Club, Music | 270.00 |
| | 25—John E. Bruce, Telephone at N. Y. and Boston | 8.60 |
| | Burt Whitman, Official Scorer | 150.00 |
| | Wm. Rafter, Official Scorer | 150.00 |
| | Ralph McMillan, Press Rep. | 150.00 |
| | A. Yager, Press Rep. | 150.00 |
| | J. G. Taylor Spink, Official Scorer | 250.00 |
| | 31—Boston A. L. B. B. C. National Commission World's Series Statements | 4.50 |
| | Wm. Harridge, Expenses | 171.13 |
| | D. Leroy Reeves, Expenses | 98.50 |
| | J. G. T. Spink, Expenses | 148.50 |
| | Total | $377,908.00 |
| | Balance | 30,242.05 |
| | Total | 408,150.05 |

461 Vouchers and receipts for the above amounts are at your disposal.

Yours respectfully,

JOHN E. BRUCE,
*Secretary-Treasurer, National Commission.*

* * * * * * *

No. 1269. Notice to All National Agreement Clubs.

Daily inquiries are received from National Agreement clubs relative to the status of players who deserted them and played with Federal League teams.

The right of the Federal League to such players, whether they violated contracts or refused to recognize reservations, is recognized, and that League has full authority to dispose of them.

If, however, such players are released outright by the Federal League, the National Agreement clubs which they deserted will

have priority of right to their services, if they desire to secure them.

The consolidated Chicago National League Club and the Chicago Federal League Club, and the consolidated St. Louis American League Club and the St. Louis Federal League Club, will be required, in disposing of their players to a club of an opposite major league, or to any club of a lower classification than a major league, to secure waivers, as is provided for by the rules and regulations now governing.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*

January 18, 1916.

462 No. 1278. Notice to All National Agreement Clubs.

In all cases in which a player, in accordance with the Commission's recent ruling, has reverted to a National Agreement Club, as the result of his unconditional release by the Federal League or any of its clubs, it is the duty of the club to which he returns, to promptly contract with such player, transfer him to another club, or waive all claim to him in writing.

Players so released by the Federal League, or any of its clubs, are directed to forthwith apply to the clubs to which they revert for employment.

Major league clubs are instructed to notify the president of their respective league what action, if any, has been taken relative to players which have reverted to them.

Minor league clubs are required to file similar reports with Secretary Farrell. In all instances in which the interested National Agreement Club does not use ordinary diligence in signing or disposing of the player, its right to him will not be recognized.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*

February 28, 1916.

No. 1279. In re Status of Player Tony Smith.

Player Tony Smith protests to the Commission against his reservation for 1916 by the Galveston Club of Texas League and requests that he be declared a free agent.

It appears that all members of the Galveston team were paid in full up to August 15, 1915, and that on the following day that
463 city was visited by a hurricane, in which many lives and much property were lost. As a result of this calamity, the business of the Galveston Club was paralyzed.

On the application of its officials to the National Board, the club was accorded permission to suspend operation after August 21st,

and retain the privilege of reserving its players for the following season. A proviso was made, however, that the salaries of the players from August 16th to August 21, inclusive, should be adjusted within sixty days. This settlement was made with the players within the prescribed time.

The Commission denies this player's application to be declared a free agent and holds that under the circumstances the Board was justified in its action and that at most he only suffered inconvenience in being required to wait for sixty days for the six days' salary due him.

The Galveston Club was assuredly entitled to extraordinary consideration because of the exceptional plight in which it was put by a storm, which wrought ruin in its path.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*

February 28th, 1916.

No. 285. In re Amendment to Rule 17, Relative to Contractual Obligations Between Clubs and Players.

Rule 17 of the National Commission has been amended by the adoption of the following new section, which is substituted for paragraph "h:"

"Paragraph *h*. Whenever a player under an unexpired contract for one or more seasons notifies his club in writing or in per-
464 son that he will not report to it for the succeeding season, such declaration shall be construed as an annulment by the player of such contract. To safeguard itself, the club thus notified shall be permitted to carry the player on its reservation list under the heading of 'Voluntary Retired,' and in the event of the player desiring to return to the game, the salary question shall be a matter of new negotiation between him and the club with which he declined to observe his contract."

Former paragraph "*h*" of the rule shall remain effective and be designated as paragraph "*i*."

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER.

March 7, 1916.

Plaintiff's counsel also read from said 13th annual report case No. 1280 which was a decision regarding the Territorial Status of Rock Island, Ill., Club.

"No. 1280. In re Territorial Status of Rock Island.

"A controversy between the I. I. I. League and the Central Association, relative to the territorial rights to the city of Rock Island, Ill., has been called to the attention of the Commission by President Tearney of the I. I. I. League.

"In the season of 1914, the Central Association located a club in Rock Island, which for many seasons had been a member of the I. I. I. League. On protest by the I. I. I. League, the National Board directed the Central Association to retire from that city.

"At the National Association's 1914 annual meeting, a resolution declaring Rock Island open territory, was discussed and withdrawn. At the National Association's annual session in 1915, the claims of the I. I. I. League and the Central Association to Rock Island were considered by the National Board, which appointed a committee of three of its members to visit that city, investigate these claims and submit a report, which would be considered final to the Board.

465 "This report, which was filed on January 11, 1916, sets forth that the Committee unanimously agreed that the I. I. I. League had forfeited its territorial rights to Rock Island, because President Tearney of that league had failed to make good the following declaration, made in the 1915 annual meeting of the National Association.

" 'If the I. I. I. League failed to occupy Rock Island at the opening of the 1915 season or if such club failed to draw satisfactorily after the season was opened and was transferred from Rock Island, the said Rock Island territory would then be considered as surrendered by said league.'

"It was further recited that this promise was made in the presence of the President of the Davenport Club of the I. I. I. League without protest from him.

"The report closed with several recommendations, one of which was that the claim of the Central Association, to Rock Island be granted.

"The report closed with several recommendations, *the* of which Board with instructions to the Central Association to perfect an organization to operate a Central Association club in Rock Island on or before February 8, 1916.

"The several objects of the National Agreement, stated in its preamble, are fundamental and cannot be disregarded by the National League, the American League or the National Association.

"The Third Object of the National Agreement reads as follows:

" 'Protection of the property rights of those engaged in base ball as a business without sacrificing the spirit of competition on the conduct of the clubs.'

"The territorial privileges of a league are unquestionably one of its most valuable assets.

"The Commission does not construe the abandonment of Rock

Island as a member of the I. I. I. League as a relinquishment
466 of the territorial rights of the cities of Moline and Davenport under the provision in the National Agreement of the National Association forbidding any of its club members 'to play within five miles of any city in which is located a club member of the National Association of Professional Base Ball Leagues.' The same regulation is effective in the National League and the American League and the Commission has rigorously upheld the five-mile provision against offending clubs and players.

"Moline and Davenport, which have I. I. I. League franchises, are each less than five miles from Rock Island and hence their territorial prerogative cannot be infringed upon without subjecting them to liability to serious damage in their property rights.

"Injury to every club in the I. I. I. League is possible if the Central Association should be permitted to operate within five miles of Davenport and Moline because of the competition that will result.

"The Commission cannot seriously consider a contention that a league president can, by word of mouth or in writing, deprive his league of any of its vested rights or privileges unless he is specifically authorized by his league to do so.

"The National Board's action is therefore overruled by a majority vote of the Commission and the Central Association is hereby directed not to operate within the city of Rock Island.

"In coming to this conclusion, we cannot agree with President Tener for the reason that the unanimous finding made by the Committee that the Rock Island territory was abandoned was based only upon something that they contended President Tearney had said at one of the meetings of the National Association. We have already pointed out that a president of a league cannot abandon territory in his league covered by the five-mile limit without first having the sanction of the league. That this contention is correct is established by the fact that the National Association in 1914
took the same view of this matter. Previous to that time,
467 the I. I. I. League had been operating in Rock Island; then abandoned the territory, following which the Central Association located a club therein and thereupon the I. I. I. League protested against this action of the Central Association and the National Board at that time directed the Central Association to retire from that city.

"AUG. HERRMANN,
"B. B. JOHNSON,
"*National Commission.*"

March 2, 1916.

"*Dissenting Opinion.*

"Consideration of the points involved in this case make it, when all the different phases are included, without precedent before this tribunal, in so far as I have knowledge.

"My grounds for dissenting from the majority opinion may be explained as follows:

"Whether territory, once occupied and operated, becomes a vested and inalienable right of a league.

"Whether territory, although occupied and operated by a league, is not forfeited by the failure of such league to occupy and operate it for an unreasonable period of time.

"The rights and privileges of the base ball public of any restricted territory should be considered above a strict interpretation of a rule.

"To acknowledge and give such a perpetual fee simple in base ball territory under all conditions and circumstances would be prejudicial to the interests of the game and to all connected with it.

"Territory occupied and operated continuously, or with rare and limited lapses, should be considered exclusive property rights. Territory occupied and not operated for an unreasonable period of time should not be considered or become an exclusive and
468 inalienable property right. To vacate territory for two years or more, in my judgment would be to deliberately invalidate and forfeit the rights and privileges of the club and league which so neglected their prerogatives.

"The evidence in the case shows that the appellant did forfeit all its rights and privileges to the territory in dispute by neglecting to operate the territory for an unreasonable time. The evidence also shows that appellant acknowledged that it had so forfeited and invalidated its rights and privileges to the territory in question.

"The evidence in the case further shows that the National Board appointed a committee of three of its members to investigate the several and respective claims of the parties in controversy. We quote the following from the report of the committee:

"'After careful consideration, your committee unanimously agrees that the Three I League has no rights at present to the territory of Rock Island.'

"To find for the appellants in this case is to say, in effect, that any league possessed of territorial rights under the circumstances similar to those presented in this case has a vested right in perpetuity; cannot by any overt act, neither by its officially pledged word so to do, nor anything conceivable, vacate and abandon such territory; but at its caprice, will and pleasure may or may not operate such territory, even to the extreme hardship, unfairness and injustice to the citizens residing within the limits of such territory.

"And under such an interpretation of the rule invoked by this appellant, arbitrary and autocratic power to do or not to do could and would continue as long as this section is a part of the National Agreement.

"JOHN K. TENER."

March 2, 1916."

469 Counsel for plaintiff also read case No. 1290, involving player Compton, as follows:

"No. 1290. In re Claim Involving Player Compton.

"The St. Louis Club of the American League, which absorbed the club which represented that city in the Federal League, contends that it is entitled to the services of Player Bash Compton under the provisions of the Peace Agreement and requests that he be formally awarded to it.

"The claimant also presents a claim against the Kansas City Club for the return of $436.90 under a clause of the agreement under which injunction proceedings brought by that club in the Circuit Court in St. Louis restraining the player from playing with any club other than the Kansas City Club was compromised and dismissed.

"The St. Louis Club asks that the Boston Club be required to return to it $500 advanced to the player.

"This player deserted the Kansas City Club last season and on July 24, 1915, entered into a contract with the Federal League Club for 1915 and 1916.

"Subsequent thereto, the player joined the Boston Club of the National League to which he was transferred by the Kansas City Club and remained with it to the close of its season and was regularly reserved by it.

"The player's services are claimed by the St. Louis Club because of his contract with it for 1916 under the terms of the Peace Agreement in which it was agreed that the National Agreement clubs should recognize and respect all contracts between players and Federal League clubs.

"This provision is incorporated in the Peace Agreement and has been observed by National Agreement clubs. It was, however, also agreed and so stipulated in such agreement that a list of the players claimed by Federal League clubs should be submitted to the
470 Commission and that this provision should apply only to players included in this list.

"The name of Player Compton is not on the official list filed by President Gilmore and hence the Commission construes the failure of the St. Louis Federal League Club to assert claim to him in the manner prescribed in the Peace Agreement, as a waiver and surrender of all claim to him and an acknowledgement of the right of the Boston National League Club, with which he finished the season of 1915, to his services.

"The Commission is unanimous in the opinion that if the claim had been presented during the peace conference, it would not have been conceded, for the reason that the Boston Club's investment would have been fully protected by the representative of organized ball.

"The clause of the Peace Agreement on which the St. Louis Club relies applies only to cases in which the player not only contracted with a Federal League club, but had not returned to organized ball or prepared to do so prior to the signing of the tentative agreement.

"Player Compton's status as a National Agreement player was settled when he entered the service of the Boston National League Club and there is no evidence before the Commission to show that he made any overtures to rejoin the St. Louis Club in 1916. The Commission, therefore, dismisses this claim of the St. Louis American League Club and rules that the Boston National League Club is entitled to his services.

"Clause 3 of the compromise agreement under which the injunction suit, brought against Player Compton by the Kansas City Club, was dismissed, reads as follows:

" 'That the plaintiff (the Kansas City Club) shall pay the defendant (the player) or his assignee (the St. Louis Federal League Club) the sum of salary due the defendant from the plain-
471 tiff at the time of the alleged breach of his contract as aforesaid, within thirty days after reporting for duty to plaintiff.'

"For value received, the player assigned this claim for $436.90 to the St. Louis Federal League Club on July 28, 1915, as witnessed by Manager Shay of the Kansas City Club.

"The St. Louis Club's claim for $436.90 is allowed against the Kansas City Club, which is directed to adjust it through the office of Secretary Bruce within five days after the promulgation of this finding.

"As the player elected not to give service to the St. Louis Federal League Club under the 1916 contract he signed with it, he is not entitled to retain the $500 he received from it as advance money.

"The Commission, therefore, allows this claim and directs the Boston Club to forward its check in adjustment within five days after the promulgation of this finding. The Boston Club is authorized to retain this amount out of the player's salary.

"AUG. HERRMANN,
"B. B. JOHNSON,
"JOHN K. TENER,
*"National Commission."*

April 5, 1916.

Counsel for plaintiff also read case No. 1297 from said Thirteenth Annual Report, which involved the status of player Dickson, as follows:

"No. 1297. In re Controversy Relative to Player Dickson's Status.

"Under date of May 5th the Minneapolis Club wired Secretary Farrell that Pitcher Dickson, purchased by it from the Pittsburgh Federal League Club, was playing with Beaumont Club of the Texas League.

"President Cantillon supplemented this telegram with a
472 letter to Secretary Farrell, enclosing the receipt of President Gwinner of the Pittsburgh Federal League Club for $800 for the release of Player Walter Dickson, dated February 2, 1916.

"President Morris, of the Texas League, wrote Secretary Farrell

on May 9th, submitting a copy of a letter from President Gwinner to the player, reading as follows:

Pittsburgh, Pa., Jan. 28, 1916.

Mr. Walter Dickson,
Greenville, Texas.

MY DEAR SIR:

"As the Federal League has come to an agreement with organized base ball to go out of business, and as your contract with this Company has expired, we take this opportunity to notify you that you are a free agent, and are at liberty to negotiate with any base ball club in organized base ball for a position. I want to thank you for the way you performed for me while in my employ, and I wish you good luck in whatever you may get interested in, and if you should ever be in this city, I will be pleased to see you.

Yours very truly,

E. W. GWINNER,
*President.*"

"P. S.—I wish you would write to Mr. Hi Brewer, Longacre Building, New York City, as he is trying to place you.

"The case was thereupon referred to the Commission by Secretary Farrell.

"President Gwinner in his statement to the Commission submits a letter from the player, acknowledging the receipt of his release and asserting that the Rochester Club, which he deserted, did not consider it valid.

"On the strength of that letter, which he construed as a
473 non-acceptance of his release and an expression of his unwillingness to return to the Rochester Club, President Gwinner disposed of the player to the Minneapolis Club.

"It appears from the correspondence between President Morris, of the Texas League, and Secretary Farrell, that this player is under contract to and in the service of the Houston Club, of the Texas League.

"The right of the Pittsburgh Federal League Club under the Peace Agreement to transfer a player for a consideration to any club it desired is beyond question, but it is also true that the outright release of one of its players terminated the control of President Gwinner and his club over him.

"On the unconditional release of this player by the Pittsburgh Club, his services under the Commission's ruling reverted to the Rochester Club, which had title to him under the National Agreement regulations prior to the time he joined the Pittsburgh Federal League Club.

"The Commission declares the sale of the player to the Minneapolis Club null and void and rules that his services belong to the Rochester Club, to which he is directed to report without unnecessary delay.

"The Minneapolis Club's right to reimbursement by President Gwinner is beyond question.

AUG. HERRMANN,
B. B. JOHNSON,
JOHN K. TENER,
*National Commission.*"

May 31, 1916.

Counsel for plaintiff also read from said Thirteenth Annual Report case No. 1298, involving the status of player Sisler and a controversy between the St. Louis American League Club and the Pittsburgh National League Club to the services of said player as follows:

474 No. 1298. In re Status of Player Sisler.

The status of this player has been pending before the Commission since August, 1912.

The first contention made to the Commission by his attorney was that the reservation of this player by a National Agreement Club imperiled his amateur standing.

Subsequent to the time that this question was passed upon by the Commission, his attorney again appeared and filed a request that the player be declared a free agent, which was finally granted. The matter is now before the Commission on a complaint filed by the Pittsburgh National League Club, which is carrying this player as ineligible on its roster, notwithstanding the fact that he is playing with the St. Louis American League team.

In order that the matter may be fully understood, it is advisable to go into full detail with reference to this case.

It appears that in 1910 the player was playing with a semi-professional team in and around Barberton, Ohio. On the second day of January, 1911, he was signed to a contract with the Akron Club by an umpire, and this contract was duly promulgated in April of that year by Secretary Farrell, of the National Association. Attention is called to the fact that in the contract no definite period was fixed for the term for which the player should perform services for the Akron Club; no mention was made whether it covered a part of the season, an entire season, or the player's whole base ball life. The official bulletin issued by Secretary Farrell on September 18, 1911, shows that the player was transferred by the Akron Club to the Columbus Club of the American Association, which club later on disposed of him through sale to the Pittsburgh National League Club for a consideration of $5,000, provided the player's services were retained by that club after May 1, 1913. Attention is called to
475 the fact that the Akron Club at the time the player was signed to a contract with it under the control, and in fact owned, by the Columbus Club. The agreement for the transfer of the player by Columbus to Pittsburgh was filed with the National Commission and, as it was in proper form, was approved and promulgated by the Commission. The player never reported to any of the clubs above referred to. He was carried as a suspended player by the Akron Club in 1911; was suspended by the Columbus

Club in 1912, and since that time has been carried as an ineligible player by the Pittsburgh Club. The records further show that the player was requested to report to the Columbus Club on Sunday, March 17, 1912, to accompany that team on its training trip. He promptly replied that he would be unable to report as directed; that this parents objected very much to his stopping school to play professional ball and that in view of the fact that he was still under age he had to do as they said. When the player signed his contract with the Akron Club he was still in his seventeenth year.

The attention of the Commission was first called to this case in August, 1912, by George B. Codd, of Detroit, who represented that the annual reservation of this player by a National Agreement Club jeopardized his eligibility as a member of the Michigan University team. At that time a letter was received from the player, which was as follows:

"Barberton, Ohio, August 27, 1912.

Mr. August Herrmann,
Cincinnati, Ohio.

DEAR MR. HERRMANN:

The newspapers are announcing that I have been sold by the Columbus Club to the Pittsburgh Club. I do not want to belong to any professional club and do not intend to play professional
476 base ball until I finish my college course.

Two years ago this winter, while I was attending high school, I signed the base ball contract given me by an umpire that watched me pitch the summer before. The proposition came very suddenly and unexpectedly, and I suppose I was an easy mark as I now look back upon it. At that time, being only seventeen years old, I thought it would be a great thing to sign a league contract and supposed that I would be sort of a hero among my fellow-students and the people around Akron in general.

I did not understand for some time after this that my signing would in any way interfere with my playing with a college team, nor did I in any way understand the nature of the contract I signed. I did not think what the signing meant at that time, but as a matter of fact did not know that base ball law would rule that I had signed a contract that would hold for a lifetime.

This present year when I enter the University I shall be eligible for the first time for athletic teams and while neither the University nor anyone connected with it ever in any way offered me compensation for playing on the University teams, yet on account of the possibility of my assistance in making the Varsity team, I have been able to secure a position by which I can pay nearly all my college expenses. This would not have come to me, had it not been for the help of friends who were interested in my competing in athletics. If I am declared to belong to any professional club, all these opportunities will doubtlessly be lost.

Therefore, because I did not understand the base ball contract and was not then able, on account of this umpire's flattery and also by his clever talk, to do what I would have done had I been

able to think it over and had a chance to see my parents about it, also on account of the college rules and the opportunities I have to work my way through school. I hope you will give my situation careful consideration, and, if possible, you will decide favor-
477 ably by stating that I do not belong to any club.

Very respectfully yours,

GEORGE SISLER."

A letter was also received from the boy's father, which reads as follows:

"Clinton, Ohio, August 30, 1912.

Mr. August Herrmann,
Cincinnati, Ohio.

DEAR SIR:

I am writing to you in regard to the sale of my son by the Columbus Club to the Pittsburgh Club, as it seems to me Columbus Club ought not have any claim on him.

I think a great disadvantage was taken of George in getting him to sign. First, they got another boy on the high school team to sign with Akron in order to influence George. Then, after George's contract was signed, the other boy was released. At this time my son was only sixteen or seventeen years of age and a small schoolboy. He was away from his mother and me and had never been in a city much before this time. He was easily flattered and this Umpire Gochler easily persuaded him to sign. It was purely because he was overawed and, in fact, he did not know what he was doing then and did not realize for some time afterward what he had done. George was a bashful, backward boy and is so today. He is very modest and the praise of Gochler, together with his show of knowledge, flattery and advise, made George think he was doing something great to sign.

Now, I want to say, Mr. Herrmann, that I was never consulted in this matter and as soon as I heard of it I opposed it and did not like the methods used to get my son to sign and the advantage that had been taken of me. George has been sorry he signed ever since he understood the situation and I have never consented to his playing professional ball and will not until he finishes his
478 college course. While I am not a wealthy man, yet with the self-assistance George is willing to render, I feel he can be kept in college and not play ball for money. I cannot understand how a minor's contract of this kind can be held good. I live only a short distance from Akron. No attempt was made to consult me; on the other hand, every scheme was used to sign him. In all the courts a minor can repudiate his contract or his parent can do it for him. The contract is always held to be a voidable one. Now George says you do not recognize the law in this case, yet it seems that justice remains a factor easy to determine without the application of any law. If this contract is held good it will deprive my son working his way through college, as he has secured a position

very largely because he has athletic ability. However, regardless of this, yet because of his youthful age and his disposition, the unfair advantage taken of him, the method used to get his signature and the immediate repudi-tion of the act by us both; these afford unusual circumstances which would seem to make null and void even a baseball contract.

No one has invested any money that would be lost. George is a good student and will finish his course before he plays ball—he has refused offers of high salary this summer in order to be eligible for the college team. Now, the only ones who will lose in your refusing to hold this contract void will be George and myself and it will affect us for the next three years.

But, Mr. Herrmann, regardless of the facts that it will be loss to us also every court would avoid any contract he might make, it seems only just and fair that this contract should not stand.

Very truly yours,

C. C. SISLER,
*Clinton, Ohio. R. F. D. 36.*"

479 The Commission took the matter under consideration at that time. Before the question of his amateur standing had been determined, Mr. Dreyfuss, of the Pittsburgh Club, requested the President of the National League, Mr. Lynch, to place the player on the ineligible list of the Pittsburgh Club, for the reason that although they sent a representative to see him twice, he would not sign a contract or report to that club and that he stated among other things that he did not intend to play ball for a year or two at least.

When the letter from Mr. Lynch on this subject was received, the Chairman of the Commission questioned the right of the Pittsburgh Club to carry this player on its eligible list, for the reason that he had never participated in any game with any professional club and for that reason was not subject to sale by one National Agreement Club to another. In the beginning it was contended that the player's statement that he did not want to play ball at that time and that he wanted to finish his college course was a mere subterfuge and that he was seeking a position with some other major league club. It developed, however, that this was not a fact, as the player did not become a professional until after he was through his college course. The Pittsburgh Club, however, was not directed to remove his name from its ineligible list at that time.

Further consideration was given to Judge Codd's request to clear up the player's amateur standing and on October 1, 1912, a letter was received from President Lynch, of the National League, which reads as follows:

"October 1, 1912.

Mr. August Herrmann, Chairman, National Commission,
Cincinnati, Ohio.

DEAR SIR:

I have your correspondence with Mr. Dreyfuss regarding
480 player Sisler. I have given both sides of this case considerable thought. The Commission wants to be fair to both parties and I would make the suggestion that the Commission could draw up a finding declaring the player a free agent, with the proviso that if he wishes to enter professional base ball the Pittsburgh Club be given first chance to negotiate for his services. If club and player cannot agree on terms, the player is at liberty to sign where he pleases.

Yours truly,

T. J. LYNCH."

Notwithstanding the fact that both the player and his father wanted the Akron contract voided at that time, Mr. Johnson and the Chairman of the Commission were of the opinion that the Pittsburgh Club's enterprise in looking up this player and paying some money for his release, should be recognized as much as possible and, as the player's attorney at that time did not insist upon him being declared a free agent, but rather wanted his amateur standing cleared up, the National Commission unanimously approved the following letter, which was sent to Judge Codd:

December 23, 1912.

Hon. Geo. B. Codd,
Judge of Circuit Court,
Detroit, Mich.

DEAR SIR:

Relative to the status of Player Sisler, which you discussed with the Commission through correspondence and in person at a meeting in this city, I have to advise you that a searching investigation discloses that he had not participated in a game as a member of a National Agreement team and so far as the records of the Commission show, is not a professional ball player.

In 1910 he negotiated with a representative of the Akron
481 Club of the Central League and later entered into a contract with that Club, but never reported to it.

On the advice of his father, who declined to sanction the contract referred to, he made every effort to have it cancelled. His reservation by the Akron and Columbus Clubs and the Pittsburgh Club's claim to his services are predicated on this unfulfilled contract.

The Commission is not in a position to pass on the amateur standing of this player, but its members are unanimous in the opinion

that beyond his technical connection with the clubs mentioned, he has never been identified with professional ball.

Any claim the Pittsburgh Club may have to his services through a deal with the Columbus Club, is and will continue to be dormant and of no effect until the player voluntarily reports to the club and becomes a member of its team.

In other words, the player's status is and will be wholly dependent on his own acts, regardless of formal claims by the Pittsburgh Club or any other National Agreement Club of the right of priority in contracting with him.

The Pittsburgh Club realizes this, but requests the Commission to recognize its claim to the services of the player, if during or after his college career he should conclude to become a professional ball player.

Regarding this request as reasonable and in no wise injurious to the interests of the player, the Commission had decided to await developments before taking official action.

Respectfully,

AUG. HERRMANN,
*Chairman.*"

Particular attention is called to that part of the above letter which refers to the claim of the Pittsburgh Club.

Nothing further was then heard of the matter until April 22, 1914, when Judge Codd again appeared before the Commission at
482 a meeting held in Chicago. In this communication to the Commission at that time he called attention to the letter written him in December 1912, already referred to, wherein the Commission stated that "A searching investigation discloses that he (meaning the player) has not participated in a game as a member of a National Agreement team and in so far as the records of the Commission show is not a professional ball player." At that time Judge Codd made a further contention as follows:

"No official action it seems however was taken by you nullifying any claim that anyone under your control and subject by agreement to your rules should have upon his services, in that the Pittsburgh Club has reported him as upon their suspended list, and as I am advised, claims his services in the event of his entering professional base ball. I also understand that this claim and a recognition thereof by your body precludes him from being a free agent in this regard, which now and always has been our claim he is, as the claimed signing in the first instance by Akron is so manifestly void and was so promptly repudiated, that no subsequent rights, either legal or moral, could be predicated thereon.

This is a grave injustice to both Sisler and his father and cannot but operate to financial and other loss to them. Under these circumstances, in their behalf, I earnestly request and make formal demand that any claimed rights over said George Sisler either by yourself or those whom you represent or have jurisdiction over, end, and that said Sisler be declared by you to those, who through your agreements, conform to your rules and decisions, a free agent."

Judge Codd was informed that the Commission would give his

request proper consideration and a copy of his request was transmitted to Mr. Dreyfuss, who notified us on April 24th that he had written a gentlemen who saw Sisler in behalf of his club and as soon as he heard from him he would write us with reference to the case.

483 Later on Mr. Dreyfuss wrote the Commission stating that he could see no reason whatever why his club should be asked to give up their rights to this player and in accordance therewith declined to do so.

As in all cases pending before the Commission, the entire correspondence was submitted to all the members of the Commission from time to time and while the request of Judge Codd to have the player declared a free agent was under consideration, a letter was received from Mr. Johnson stating among other things that "the fact should not be overlooked that the Columbus and Pittsburgh Clubs have not a moral or legal claim to the Player; that he was signed through misrepresentation by an obscure umpire to an Akron contract; that his father served notice of a repudiation of the contract and that that feature of the case was forcibly brought out in his talk before the Commission and for that reason the Commission cannot sustain the Columbus and Pittsburgh Clubs in their effort- to retain title to the player and he should, therefore be declared a free agent" and requested that his vote be so recorded.

Before hearing from President Tener on the subject at that time, another letter was received from Judge Codd in which he stated among other things the following:

"I had a long talk with Sisler at my office yesterday afternoon, and he again stated to me the substance of what I advised you at Chicago; that, under no circumstances would he even consider playing with Pittsburgh unless he had the opportunity to act fully and freely as a free agent in his dealings in this regard."

And also a letter from Mr. Dreyfuss in which he stated that he would see Sisler "next week sure; have made all arrangements to that end and hope to be able to satisfy the young man, once he is free from outside influence."

On May 15, 1914, President Tener wrote as follows:

484 "Harrisburg, Pa., May 15, 1914.

August Herrmann, Esq.,
Chairman, National Commission,
Cincinnati, Ohio.

DEAR SIR:

Having read the voluminous correspondence and testimony in the Sisler case, it is my judgment that the Player's plea to be declared a free agent should be granted with a qualifying condition.

My decision in the case is based on the very first act of the player in signing a contract with the Akron Club. The tender age of the player and the circumstances under which he signed with the Akron Club, the fact that the contract of his minor son was immediately

repudiated by the father, are convincing conditions that justify a decision in granting the player's request to become a free agent.

As a cardinal principle of justice and right, I am opposed to the system which binds a promising ball player of tender age for an indefinite period until he is ready or willing to enter upon the fulfilling of a contract. During the interim of his agreeing to play with a certain club and the actual time when he begins such service, his ability may be enhanced a hundredfold, and I believe he of all persons should be in a position to profit financially by his increased value and enhanced ability. Mr. Sisler's case comes exactly within the circumstances cited.

There is nothing in the evidence that even tends to show that the Pittsburgh Club has not conformed with all the laws and regulations of organized base ball and is not within its rights in contending that it has a moral right to first claim on Player Sisler's services, or at least that Sisler gives said club the privilege to negotiate first for his services in the event of the player desiring and intending to play professional ball. But the Pittsburgh Club's claims and con-
485 tentions are all based on the assumption that the signing of an Akron Club contract by Sisler was perfectly legal, valid, reasonable and binding. But for reasons set forth above, it is my judgment that this original act could not operate to deprive the Player of the right to contract with a club on his arriving at a more mature age.

However, in consideration of the money expended by the Pittsburgh Club in its efforts to protect its rights under base ball law, as well as its moral rights to the services of Player Sisler, it is my judgment that the Pittsburgh Club be given the privilege and opportunity of first negotiating with Player Sisler for his services; that Player Sisler acted in a bona fide and sincere manner with the Pittsburgh Club and in the event of his signing with another club and the Pittsburgh Club alleging that its salary offers and inducements were as high or higher than those made by the club signing Sisler, then the circumstances and facts attending the signing of the said player to be reviewed by the National Commission before the said player is permitted to play.

Very truly yours,

JOHN K. TENNER,
*President.*

The Chairman of the Commission at that time fully concurred with the views expressed by Messrs. Lynch, Tener and Johnson that the player should be declared a free agent, yet, at the same time, felt, as did the other members of the Commission, that the Pittsburgh Club should be given every opportunity to secure his services and for that reason the matter was held in abeyance, notwithstanding the fact that Judge Codd was pressing the Commission continuously for action in the matter.

On July 24, 1914, the Chairman of the Commission wrote to Judge Codd as follows:

486 July 24, 1914.

Hon. Geo. P. Codd,
Detroit, Mich.

DEAR SIR:

Relative to the Sisler case, it occurs to me that it might be well that the Commission take no action until the player is ready to enter the service of a club. I understand that he is not in shape to play and infer that neither you nor he will object to delay.

As you are aware, the Commission's attention has been engrossed by matters out of the ordinary, which demand immediate action. Hence my failure to write you recently on this subject.

An early reply will be appreciated.

Respectfully,

AUG. HERRMANN,
*Chairman.*

In the meantime, however, information was requested of Mr. Dreyfuss as to whether or not he was making any progress in his efforts to get the player to sign a contract with the Pittsburgh Club.

On August 17, 1914, another letter was received from Judge Codd, in reply to my letter to him under date of July 24th, in which he stated among other things as follows:

"Your suggestion that the Commission take no action until the player is ready to enter the service of a club, is not at all satisfactory, and we will most earnestly protest against any such action. We feel that we are entitled to a determination at the hands of the Commission of our rights in this regard.

"I also found, on my return a letter from Sisler, in which he states that he desires to have this matter litigated unless he is given the right to act as a free agent. Whether he is in shape to play at the present time, is not material to this issue at all, as, if he
487 does desire to play in the future, he certainly has the right to treat with other clubs, under the National Agreement—for a future contract, for instance, if he desires to make one; and any action on the part of the National Commission—as I have previously argued to you—which deprives him of this right, is working a serious financial detriment to him, for which, is my judgment, the Commission will be held responsible.

"Of course, you understand that by reason of my position, I cannot do the active work in the litigation; but cannot but advise him, if he is not given this right, to seek redress publicly in the courts, and to employ other counsel for that purpose. I sincerely trust this will not be necessary."

About this time, Mr. Dreyfuss sent an agent to visit the player to try to get him to sign a Pittsburgh contract, but the agent failed in his mission.

On October 14th, Judge Codd called the attention of the Commission to the fact that his last letter has not been answered, and among other things he stated as follows:

"The time is at hand when this young man should be allowed to make a profit out of his own ability and every day's delay is adding to the damage which he is sustaining by your deprivation of his legal rights. As you know, I have already advised Mr. Sisler of what is, in my judgment, his absolute right in this regard. As you also know, I have advised him that in my judgment he had a perfect legal redress in the refusal or neglect on your part, to acquiesce in his petition. Mr. Sisler has now advised me that he is in a position and desires to go ahead with the legal action, but I had hoped to be able to handle this for him to a successful conclusion without recourse to the courts.

"He has, at my suggestion and also of his own volition, consulted with former Judge James O. Murfin of this city who
488 has carefully examined the correspondence and inquired into all the circumstances regarding his transaction and fully coincides with the view I had previously expressed to Sisler and had intimated to you that a court action would render him whole for such damage as the unwarranted action of the Commission in depriving him of his right to enter as a free agent has entailed.

"It is my judgment, and I have so advised him as has also Judge Murfin, that the terms of all trust laws would allow him treble damages in an action in the Federal Courts for his damage sustained at the time of the beginning of the action. It would not be very difficult to my mind to establish a very substantial sum as a measure for this damage."

The Chairman of the Commission thereupon wrote Judge Codd stating that his communication would be referred to his associates at once with suggestions that would, in his judgment, result in an early adjustment of the player's status, and at that time he also wrote to Messrs. Johnson and Tener stating that in a conference with a major league club owner, the latter suggested that the Commission declare the player a free agent and that no major league clubs negotiate with him for his services other than the Pittsburgh Club, thus affording that club the sole right to contract with him. The Chairman also notified his associates that, in his judgment, litigation over the player should be avoided.

The suggestion of the major league club owner above referred to evidently did not appeal to Mr. Dreyfuss, as will be seen by the following quotation from his letter:

"I am just a little inclined to think that such a course would place us in a worse position than we are at present; in other words, that the remedy would be worse than the evil it is intended to cure. I say this for the reason that I am inclined to believe that if the
club owners, of the National and American Leagues
489 agreed to have nothing to do with this young man, taking the position that he must work with us, that we would come precariously near (if not absolutely guilty of) conspiracy in the eye of the law. I would suggest that you secure legal advice on this

and of course, if this plan can be followed out, it would be the most effectual manner of treating with this question.

"Further than this, I would suggest that you also get the advice, or rather opinion, of Judge Kinkead on the question as to whether the Pittsburgh Club is in any way damaging the prospects of Sisler. In other words, I would like Judge Kinkead's opinion on the claim that the Pittsburgh Club's position in this matter can be held as legal grounds for a suit for damages by this young man. It must be taken into consideration, of course, that this young man has absolutely declined to consider any proposition from us, although we have approached him several times along that line. Our idea is, that as he will not give us an opportunity to present a proposition to him, that it is impossible for anyone to determine whether or not we would be damaging him; and along this line I am inclined to think that the Pittsburgh Club would take care of him as well as any other club in base ball. Hence, I cannot see any legal ground for a case of damages.

"If the Commission intends to take this matter up in a meeting of the Commission, I shall be glad to talk this matter over with them."

The Chairman of the Commission replied to Mr. Dreyfuss that he would take up the matter with Messrs. Galvin and Kinkead, although he personally would be inclined to follow the suggestion made by the major league club owner above referred to, further stating that he was quite sure that the Commission would get into the court if they did not declare the player a free agent and felt that it would be unwise to have any more baseball litigation.

490 The following opinion was then received by the Commission from its attorneys:

"October 26, 1914.

Hon. Augustus Herrmann,
Chairman, National Commission,
Wiggins Block, City.

DEAR SIR:

We have at your request examined the file relating to the matter of George Sisler, pending before the Commission. It appears that on January 2, 1911, George Sisler signed a contract with the Akron Exhibition Company; that at that time Sisler was a minor, apparently seventeen or eighteen years old; that later the Columbus Club, which we understand controls or owns the Akron Exhibition Company, sold Sisler to the Pittsburgh Club; that Sisler never reported to any of these clubs; that Sisler repudiated his contract on the ground, chiefly, of his minority, and that Sisler's father expressly disapproved of the contract and refused his consent to it. It appears that from time to time the matter has been before the Commission at the request of Sisler that he be declared a free agent; that his interests have been presented to the Commission by Hon. George P. Codd, one of the judges of the State Circuit Court at Detroit, Michigan; that in his last letter to the Commission on October 14th Judge

Codd states that as he could not act for Sisler in litigation, former Judge O. Murfin has gone into the matter and that Judge Murfin and Mr. Codd advise Sisler that he has a cause of action against the Commission growing out of the fact that under the National Agreement and the practice of organized base ball Sisler has been since his refusal to report under his contract carried upon the suspended list of the Pittsburgh Club and that this fact has prevented him from securing employment or making a contract to play base ball with any other club operating under the National Agreement.

491 The contract of a minor is generally void and under the circumstances of this case there is no question that the contract with the Akron Exhibition Company gave the latter company no legal rights whatever. The situation is, therefore, from a strictly legal standpoint, the same as though the clubs operating under the National Agreement had united in an agreement not to employ a man qualified to play base ball and who but for this agreement would probably be able to secure a contract with some one of the clubs; and that the purpose of this agreement on the part of the Clubs was to force the man to play with the Pittsburgh club, who had no legal claim whatever to his services.

We agree with the opinion expressed by Judge Codd and Judge Murfin that these facts would constitute a good basis for a damage suit against the commission, and we go further than Judge Codd has in his letter and are of the opinion that the Akron, Columbus, and Pittsburgh clubs would be proper parties to such suit.

* * * * * * *

Under all circumstances of the case, we strongly recommend that litigation be avoided. It would appear from the file that Sisler's counsel are insisting on nothing other than the commission declaring him a free agent.

* * * * * * *

Very respectfully,

ELLIS G. KINKEAD,
JOHN GALVIN."

"October 27, 1914.

Hon. August Herrmann,
Chairman, National Commission,
Wiggins Block, City.

DEAR SIR:

492 Supplementing our letter of the 26th with reference to the George Sisler matter, we wish to add that not only is it unlawful for the commission to attempt formally to enforce the contract of the Akron club with Sisler and the sale of him to the Pittsburgh Club for refusing to declare him a free agent, but that the clubs shall all be equally careful not to expose themselves to a

charge of conspiracy by entering into any agreement amongst themselves by which it could be shown that they had united to prevent Sisler from securing employment anywhere other than with the Pittsburgh Club. Any refusal on the part of any other club to employ him must be the voluntary act of that club and not the result of anything that can be shown to be in the nature of an agreement to that effect amongst them or of any number of them.

Very truly yours,

ELLIS G. KINKEAD,
JOHN GALVIN."

The opinion rendered by the Commission's attorneys was then given proper consideration by the Commission, and it was unanimously decided that the player be declared a free agent. However, before this was done, the Chairman wrote Mr. Dreyfuss recommending that he make arrangements at once to call on the player and negotiate for his services, and also stating that the Commission could not afford to be taken into the courts on the matter and that a definite reply must be given to the player's attorney at once.

The Pittsburgh club notified the Commission they would make arrangements to see the player some time between Christmas and New Year and would report to the Commission what success, if any, they had in signing him to a contract. The Pittsburgh club's representative thereupon did call upon the player, but without any success in so far as signing him to a contract was concerned.

On January 6, 1915, the Commission was notified by the player's attorney that unless a finding was handed down at once,
493 suit would be instituted. Notice to this effect was sent to all of the members of the Commission and they again went on record for unanimously declaring the player a free agent, which action was taken on January 9, 1915, and the following letter was sent to the player's attorney.

"January 9, 1915.

J. O. Murfin, Esq.,
1912 Dime Savings Bank Bldg.,
Detroit, Mich.

DEAR SIR:

Supplemental to my telegram to you today, the National Commission holds that no National Agreement club has claim to the services of player Sisler, about whom we have had considerable correspondence.

Under the conditions, however, that have existed in this matter, it is my judgment that if this player decided to enter the professional ranks, that he should make an effort to negotiate for his services with the Pittsburgh club, giving that club the preference.

Respectfully,

AUG. HERRMANN,
*Chairman.*"

A copy of this letter was sent to Mr. Dreyfuss.

This action on the part of the Commission in making the player a free agent ended all claims that any National Agreement club may have had to his services and hence the right of the Pittsburgh, or any other club, to carry this player on their ineligible list was thereby revoked.

On January 11th, Judge Murfin wrote the Commission among other things as follows:

"I thank you for yours of January 9th advising me that the National Commission has decided that no National Agreement club has any claim to the services of Player Sisler.

494 I agree with the last paragraph of your letter to the effect that in the light of all the circumstances he should make an effort to negotiate with the Pittsburgh club if he decides to go into professional ball. I also know that I have joined other friends in urging him to stick to organized base ball, which I am confident now he will do."

Following this, Mr. Dreyfuss made inquiry whether under the circumstances he should continue to follow the practice heretofore adopted by him and send the player a contract and he was informed by the Chairman of the Commission that, in his judgment, he should not send the player a contract for the present, but let the matter rest until something new developed.

Nothing further occurred in the matter until June 1, 1915, when the following letter was received from the player:

"Ann Arbor, Mich.,
June 1, 1915.

Mr. August Herrmann,
Chairman, National Commission,
Cincinnati, Ohio.

DEAR MR. HERRMANN:

I have not taken occasion as yet to thank you and through you the members of the National Commission in having declared me a free agent. I will do so now.

Following your wire stating "No club in organized ball has any claim whatever on Player George Sisler," Judge Murfin received your letter in which you suggested that I should give Pittsburgh an opportunity to negotiate for my services before I make any decision in the matter. I am very glad to act according to your suggestion and enclosed you will find a copy of my letter at this time to the Pittsburgh Club. I am writing other letters to other clubs that have evidenced an interest in securing my services, but I shall do nothing with anyone until I have given every consideration to my offer from the Pittsburgh club.

495 "I suppose all base ball players play ball for the love of the game and for the money there is in it and, of course, I prefer base ball with some club in organized base ball, but I think it only fair to say that I have been approached by other than organized clubs

with quite large salary offers. I will consider these offers, but as stated before, it is my desire to play with organized ball, and I do not feel that the largest offer will necessarily be the best for me to accept.

Very truly yours,

GEORGE H. SISLER."

On June 2, 1915, Mr. Dreyfuss wrote the Commission that he had seen Player Sisler in Philadelphia the week before and that he had offered him a contract; that the player stated he would not do any business until after he was through college.

Mr. Dreyfuss at that time acknowledged receipt from the player of a letter reading as follows:

"Ann Arbor, Mich.,
June 1, 1915.

DEAR MR. DREYFUSS:

I am ready to consider your very best offer. I am writing several other clubs at this time, and expect to make a decision in the matter within the next few days.

I would like to have your offer in writing and I will give you my answer not later than the middle of June, as I graduate on the 22nd.

Yours very truly,

GEORGE SISLER."

Mr. Dreyfuss also stated at that time that "the sentence saying he was writing several clubs at the same time may or may not be a bluff, but I am quite sure—and have pretty good evidence of the fact—that Branch Richey has approached this man with a view to sign-
496 ing him for the St. Louis Americans." At that time he also asked the advise of the Chairman of the Commission in the matter and stated he was prepared to offer the player a good salary under a straight league contract, but that he did not want his offer used to make a bidding contest for the player's services.

The Chairman answered Mr. Dreyfuss by stating that, in his judgment, no one in organized base ball should bid against the Pittsburgh Club, particularly so if the contract offered the player was just and reasonable. This was the opinion of the Chairman of the Commission at that time and it is his opinion now. However, it was not binding on the player.

About that time Mr. Dreyfuss stated that the player's letter covering his offer was inspired or rather composed by some one else, probably some lawyer, and that it was not in accordance with the understanding he had with the player a short time previous thereto in Philadelphia.

On June 18, 1915, Mr. Dreyfuss notified Mr. Johnson by wire that Sisler had advised him that he had decided to join the St. Louis American League Club and charged that if this was true, it was a breach of faith on the part of that club. It appears that previous to this, Mr. Dreyfuss met the player and submitted to him a proposition to play with the Pittsburgh club for the balance of the season of 1915 at $700 per month with a bonus of $1,000 for signing a contract, and

told him that his compensation for the following year would depend upon whether or not the player could hold his own in major league base ball. On June 18th the player wired Mr. Dreyfuss as follows:

"Have decided to join the St. Louis American League team."

Mr. Dreyfuss thereupon filed formal complaint with the Commission, charging that the St. Louis Club had tampered with this player and asserting that had it not been for that club's interference, he would have signed a Pittsburgh contract. He also claimed
497 to have proof to this effect. In filing these charges, the Pittsburgh Club presented an issue, which practically involved the right to the services of a player as between a National League Club and an American League Club, and, therefore, under the rules of the National Commission, it must be decided by its Chairman without the aid of either of his associates, as is provided for in Section 4, Article III, of the National Agreement.

As Chairman of the Commission, I immediately took the matter up with Mr. Johnson, alleging that on a number of occasions since the matter had been pending, Mr. Dreyfuss had contended that the St. Louis American League Club, through its manager, Branch Rickey, was tampering with the player and interfering with him in signing a Pittsburgh contract, stating further if this was a fact that then the St. Louis Club was acting in an unfair and unjust manner and should not be permitted to retain the player's services. The Chairman realized, however, that it was incumbent on the Pittsburgh club to offer proof to this effect. This has never been done. So far as the evidence shows it appears that the St. Louis American League club had no knowledge that the Pittsburgh club was to be given the preference in securing this player's services. When the player communicated with that club, they made him an offer of $350 a month and $5,000 for signing a contract, which was not satisfactory and it was finally increased to $400 a month with the $5,000 bonus. The offer, therefore, was $5,200 by the Pittsburgh club as against $7,400 by the St. Louis club. Furthermore the St. Louis Club agreed to eliminate the ten-day clause in the contract, which was not done by the Pittsburgh club, with a substantial increase in salary for the following year, if he remained with that club.

When the complaint of the Pittsburgh club was filed, the player was suspended by President Johnson. This brought a protest from the St. Louis American League club, and the player's attor-
498 ney to President Johnson, of the American League, who notified the Chairman of the Commission that he would stop the player, but would like to know who would pay the damages. I quote from President Johnson's letter as follows:

"I am not courting damage suits, and I call your particular attention to a letter I received from Judge Codd yesterday. If you, as Chairman of the Commission, want to assume the responsibility, I will suspend the player on a direct order from you, and the Pittsburgh charge of bad faith can go to a hearing. This was what I had in mind when I sent Mr. Hedges the instructions from Toledo."

Pending a further investigation of the case, the player was permitted to continue to play with the St. Louis club.

The protest of Mr. Dreyfuss in this matter was in the following language:

"My protest is against the St. Louis American League club for meddling with a player to whom they knew we had the right to his services, and for now using this player in violation—and open defiance—of the decision of the National Commission."

In so far as the decision of the Commission is concerned, it speaks for itself. If there was any meddling with the player by the St. Louis American League club, as I have already stated, it was incumbent upon the Pittsburgh club to furnish proof. This they failed to do.

On July 17th, Mr. Dreyfuss wrote the Chairman of the Commission among other things as follows:

"Incidentally, I want to tell you that the gentleman who had the conversation with Hedges, Williams and Richey in 1913 has promised to give me a written statement of the same Monday next, and as soon as I receive this will send you copy of it.

499 "Awaiting your reply, and assuring you I will forward the statement referred to above on Monday next, I remain."

These statements have never been submitted. Mr. Dreyfuss also lays stress upon the fact that in December, 1914, the Pittsburgh club asked for waivers on this player; that he was claimed by the Chicago National League club, contending that this is a very important factor in this case, because no club could claim that they did not know the player was on the Pittsburgh club's reservation list after they had been asked by that club to waive on him. There is absolutely nothing in an argument of that kind, for the reason that at the time they asked for waivers the player had not been declared a free agent and the Pittsburgh club had a right to carry him on their reserve list.

On July 20th, Mr. Dreyfuss again wrote as follows:

"For your information, would advise that I will not be able to furnish you statement spoken of in my letter of July 17th, for a couple of days yet."

The statement referred to has never been submitted.

On May 5, 1916, Mr. Dreyfuss contended as follows:

"There has been, and can be, no question as to our having secured Sisler legitimately and properly according to the rules of base ball, and that his services belong to the Pittsburgh club under such rules."

The fact that this player was declared a free agent by a unanimous vote of the Commission in my judgment dismisses this contention.

Again on May 27, 1916, Mr. Dreyfuss wrote as follows:

"As to evidence as to who has title to this player's services under base ball laws and rules, there is a sufficiency of that, and there really is no honest question in that regard. The records of the Commission itself are enough as to that. For instance, the Commission's record of September 1, 1912, approving the agree-

500 ment whereby this player's services were released by the Columbus club to the Pittsburgh club. This player was never subsequently leased by us to anyone, but nevertheless he is playing with the St. Louis Americans. This is all that needs to be answered and justified."

To this proposition I cannot, as Chairman of the Commission, agree. Had the Commission had knowledge of the manner in which this player was signed and that his contract with the Akron club was repudiated by both the player and his father, the agreement referred to by Mr. Dreyfuss would never have received the approval of the commission, nor would it ever have been promulgated.

Recently Mr. Dreyfuss charged that the St. Louis American League club in signing this player under the conditions recited in this finding, had violated the National Agreement. Upon being requested to point out in what manner the agreement was violated, he has failed to do so.

On July 17, 1915, Mr. Dreyfuss also wrote the Commission as follows:

"The St. Louis club should be made to show its contract with Sisler, and also be made to show the check that was supposed to have passed (I do not believe it ever passed), and which if it did pass, I believe will be found to antedate the time Sisler turned down the offer of the Pittsburgh club, namely, June 18th."

Checks referred to have been submitted in evidence and do not ante-date the time that the player turned down the offer of the Pittsburgh club. They are dated June 29, 1915, have been cancelled and have the player's endorsement thereon.

As already stated, the feature of the case now to be considered is one to be determined by the Chiarman of the Commission without the aid of either of his associates. However, realizing the importance of this case and the many different contentions brought out, I have kept my colleagues fully advised with reference to all of the correspondence and evidence submitted and in coming to the
501 conclusion that the case must be dismissed for lack of evidence, I desire to state that my opinion in this matter is fully concurred in by my colleag-es.

President Tener's recent letter on the subject reads as follows:

"Therefore, I cannot see but that it is incumbent now on Mr. Dreyfuss to show and prove to the commission's satisfaction that the St. Louis American League club, having tampered with the player and by persuasion or coercion did not respect the Ruling of the Commission to leave the player free in every way to enter negotiations with Mr. Dreyfuss."

The complaint of the Pittsburgh Club is, therefore, dismissed for lack of evidence and the Commission directs the removal of this player's name from the reservation list of the Pittsburgh club.

AUG. HERRMANN,
*Chairman, National Commission.*

June 10, 1916.

Counsel for plaintiff also read from the Thirteenth Annual Report case No. 1317, being a claim of the Washington Club against the Los Angeles Club relative to the draft price received by the latter Club for pitcher Love, as follows:

"No. 1317. In re Claim of Washington Club Against Los Angeles Club Relative to Draft Price Received by Latter for Pitcher Love.

"Under an approved optional agreement dated January 7, 1914, the Washington Club released Players Borton, Calvo and Love to the Los Angeles Club of the Pacific Coast League, for the stated consideration of the privilege of purchasing any member of the latter team for $2,000 before August 1st of that year.

"This option was exercised by the purchase of Player
502 Ehmke at the agreed price and before the certified date.

"At the time of the execution of the above agreement, a written side agreement was entered into between ths clubs on the same day, by the terms of which it was arranged that the title to the services of these players should remain in the releasing club and that in the event of sale or draft of any of them, the consideration received should be paid by the Los Angeles Club to the Washington Club.

"Mr. W. H. Berry, then president and principal owner of the Los Angeles Club, signed both the approved and the side agreement. He later disposed of his interest in the Los Angeles Club and acquired the San Francisco Club, which he still controls.

"Had the game been in normal condition at the time, the Commission would not consider a claim predicated on this side agreement. When this deal was made, however, the Federal League was a source of great annoyance and injury to major and minor league clubs. As a war measure, the Commission found it necessary to suspend some of the provisions of the organic laws of the game and of the rules of the Commission, to enable National Agreement clubs to protect their rights to an interest in their players. At the time these players were transferred to the Los Angeles Club the Washington Club quota of players was full and it was necessary to reduce that club's roster to the legal limit of major league clubs. While the Los Angeles Club was given permission to use these players on its team, the title to them remained with the Washington Club. Recognizing this, the Los Angeles Club bound itself not to sell any of them without the consent of the Washington Club and further stipulated that in the event one or more of them were drafted, the selection price received by the Los Angeles Club should be paid to the Washington Club.

"It should be borne in mind that the three players were obtained by the Los Angeles Club without the investment of a dollar.
503 "Under another provision in this side agreement the players were to remain with the Los Angeles Club during the playing season of 1914 'and thereafter' unless recalled by or disposed of with the consent of the Washington Club.

"Player Love continued with the Los Angeles Club in 1915 and was drafted in that season by a major league club for $2,500 which amount was paid to and retained by the Los Angeles club although the Washington Club made a demand for it.

"It is contended by the present owners of the Los Angeles Club that they purchased the franchise and club from Mr. Berry free of any incumbrances or obligations and that it was their understanding that the claim of the Washington Club to these players expired automatically with the close of the season 1914.

"President Berry makes a similar assertion as to the length of the time governed by the side agreement and declares that the arrange-

ment ended when the owners of the club notified the officials of the Washington Club that the side agreement would not be renewed for 1915.

"The Commission cannot assent to these contentions. The side agreement was, as stated therein, effective for 1914 'and thereafter.' It is in evidence that after the retirement of Mr. Berry, the Los Angeles Club, operating under its new management, returned Players Barton and Calvo to the Washington Club, thereby admitting its obligation to do so. How then can it consistently attempt to avoid responsibility for the payment to the Washington Club of the draft price received by it for Player Love?

"Solely as a war expedient, the Commission recognizes the side agreement between the Los Angeles and Washington Clubs as binding on both of them and therefore allows the claim of the latter, $2,500, the amount received by it for the draft of Player Love.

"The Los Angeles Club is directed to forward its check for that amount to the Secretary of the Commission within ten days
504 of the promulgation of this finding for transmission to the Washington Club in adjustment of this award.

"If the present owners of the Los Angeles Club desire to have it determined officially whether they are entitled to reimburse for the amount of this award from President Berry of the San Francisco Club, they should submit their claim to the National Board for adjustment, for the reason that it is purely an internal affair of the National Association.

"B. B. JOHNSON,
"JOHN K. TENER,
"AUG. HERRMANN
*"National Commission."*

505 It was thereupon stipulated by and between counsel that the defendant Harry Sinclair was the owner of the Federal League Club at Newark at the time of the peace settlement; that the defendant Charles E. Weeghman was at the same time president of the Chicago Federal League Club, and subsequently became president and owner of the National League Club of Chicago as a result of the peace settlement; but that neither of these defendants, nor the defendant James A. Gilmore, are represented by counsel.

506 The plaintiff to further maintain the issues on its part joined read in evidence the deposition of Major STUART S. JANNEY taken in the City of Baltimore, State of Maryland, May 8 and June 10, 1918, who deposed as follows:

That he is a soldier, having been called into active service on November 27, 1917, prior to which time he had been practicing law in Baltimore since 1901 and was a member of the firm of Ritchie & Janney; that he knew the Federal League of Professional Base Ball Clubs in a general way; that it had existed in a small way before witness knew it; that in the summer or fall of 1913 witness became associated with an enterprise gotten up in Baltimore by some gentlemen to establish a Club in the Federal League and witness' firm, with Mr. Edwin Goldman, incorporated the Baltimore Federal League Club and represented it throughout its career; that the Federal

League itself was a separate corporation and organized on the theory of a league of various cities for the playing of baseball—in each city a separate corporation was created; that there were eight separate corporations and each owned a one-eighth interest in the capital stock of the Federal League of Professional Baseball Clubs; that the separate corporations prepared grounds for the playing of base ball and assigned them to the central organization, which was the theory of the latter organization; that the Federal League, the parent corporation, was a corporation of Indiana; that the Federal League Baseball Club of Baltimore operated during the years 1914 and 1915—the season of 1915 was played out and when it was over certain of the Clubs of the Federal League made deals with the American and National Leagues whereby they quit playing base ball, which left the plaintiff with no one to play ball with and as a consequence the enterprise was at an end. That the plaintiff Club had made all of its preparations to continue the following year, in so far as they were necessary at that time—they had their team and men under contract, their grounds and had finished the previous season.

Witness did not remember whether any plans for needed
507 financing had been consummated or arranged for, but there was nothing so far as they could see that would make any difficulty in this respect. The Club had lost money in the last year, but the Directors had backed it and expressed willingness to continue to back it.

Q. You have spoken of an agreement which was entered into the latter part of 1915 whereby certain of the clubs in the Federal League of Professional Baseball Clubs had agreed to cease doing business. Will you tell us what knowledge you have of that agreement? A. The first knowledge I had that such an agreement had been made was about December 17, 1915.

Asked how that knowledge had come to him and to explain all the circumstances regarding it, the witness answered that on the day before Mr. Rasin, President of the Baltimore Club received a telegram from Mr. Gilmore stating, "You and Hanlon be at Biltmore in the morning. Important", and Rasin asked witness to go with him; that witness and Rasin arrived in New York on the morning of December 17th, went to the Biltmore Hotel where they met Mr. Gilmore, President of the Federal League of Professional Base Ball Clubs; that they went to Gilmore's room and Gilmore stated to them that the Federal League proposition for 1916 was "all off"; that he and certain others of the Federal League had had a meeting with certain representatives of the American and National League and had accepted their terms and they were not going to play in 1916; Witness and Rasin asked what had influenced them to do this, and he made no definite reply to that, as witness recalls. We asked what settlement had been reached—what arrangements had been made and Gilmore stated he could not tell them at that time, but would see if he could not tell them later. They asked Gilmore if he appreciated that the settlement effected was vital to the Baltimore Club and he said he knew that and that the Baltimore Club would be taken care of; that they asked him "Well, what arrangements were

made to take care of it?" and Gilmore said no arrangements were made at that time, but it would be taken care of and that they had better talk to him later to "see if he could not tell us definitely the terms." Subsequently Gilmore told Rasin, witness and Hanlon to come to his room that he could tell them what the situation was more definitely, that when they got to the room several others who
508 had been identified with the Federal League were present, including Mr. Weeghman, Mr. Sinclair and Mr. Ward, son of R. B. Ward; that when we came in Mr. Gilmore stated again that the Federal League would not continue in 1916 and asked us what we thought had better be done about it; that witness protested very earnestly against what appeared to be a deal made by certain members of the Federal League with the American and National Leagues, the result of which was to leave the plaintiff Club without anyone to play ball with and put them out of business. The answers given by one or two in a rather confused way were to the effect that it had been rather sudden and unexpected; that the way it worked out nobody was there to represent Baltimore and therefore could not arrange anything for Baltimore. Mr. Gilmore stated he had no authority to act for Baltimore and that nothing had been done, but that the others present were satisfied and they did not propose to continue the following year; that he had no doubt, however, that Baltimore could get a good settlement with the National Commission and that it was understood that Baltimore would have claims under these circumstances which would receive consideration, and he urged them to accept the situation philosophically. The conference which ensued grew rather bitter, and Mr. Sinclair came forward as representing those who had dealt, and I am afraid his words and mine were not always of the smoothest, quite a dispute arose. Witness told Sinclair and the others that there was only one way to make a settlement when there were clubs composing a league like partners and that any settlement would have to be made by them, and that any settlement that was to be effected had to be for the benefit of all, and Sinclair said that would be true; Witness even sketched on a piece of paper a suggestion that if money was to be obtained by the Federal League in any settlement effected it should be equally divided between the various Clubs, and witness read this to those who were present, but Sinclair said he would have none of that;
509 that upon being pressed it was disclosed that what the others were respectively to receive was as stated in the agreement; that the Wards were to get $400,000 in installments and several other Clubs $50,000 a piece and facilities for buying into the National League. That the conference, after this was disclosed, broke up and we went down to consult together, those of us who were there, to see what could be done in view of the situation. Gilmore and Sinclair are parties to the pending suit.

Q. Now, in this discussion in the room there, which you have just referred to, you said it was stated by some one that Baltimore had claims that would have to be considered. What was the nature of the claims which were in contemplation at that time? A. Well, there was nothing said further than that at the time. I can imagine

what he had in mind. Of course, the result of the agreement was to put the Baltimore Club out of business, and it was manifest they had some claims.

Q. To wipe out the entire value of its assets? A. Unquestionably, and it would be worse than that, because the players which it had accumulated at a large expense would not only be not an asset but a liability, because we would have to pay them salaries.

Asked what information he had with regard to any pending negotiations for a settlement between the Federal League or any of the Clubs of that League and Organized Ball, prior to the night of December 16, 1915, witness stated that as far back as November, 1914, the associated press had been carrying dispatches published in the newspapers all over the United States that negotiations were on between Weeghman, of the Chicago Federal League Ball Club, and various and sundry representatives of Organized Base Ball, and that this was such a disturbing factor in the situation in Baltimore, that in November, 1914, witness made a personal trip to Chicago to see Weeghman to ascertain if there was any truth in the statement being published and found that Weeghman had not assigned his lease to the Federal League as it should do as part of the organization and witness insisted upon that being done, which was accordingly consummated some weeks later, on account of his insistence and both Weeghman and Gilmore assured witness there was nothing
510 in these reports, that again in November, 1915, witness went to Indianapolis with Mr. Rasin who attended a meeting of the Directors of the Federal League and while there witness saw Messrs. Gilmore, Weeghman and Sinclair and asked them point blank whether there was anything in the newspapers that they were in negotiation with representatives of Organized Base Ball and they uniformly replied there was nothing whatever in these statements and that they were not in communication with them. Witness said he might say however, that their general attitude in Indianapolis did arouse some suspicion in the minds of Mr. Rasin and himself that they might be, and that their statements might not be frank. Asked if prior to his conference in New York on the morning of December 17th the question of the winding up of the Federal League was ever brought before the Board of Directors, or at any meeting of the stockholders of the plaintiff club, witness answered, "No. No one ever knew anything of it, I never knew anything of it;" that when Mr. Rasin received the telegram on December 16th from Gilmore they did not know what the subject of the meeting in New York was to be. Asked if Gilmore or Sinclair told him that the agreement which was mentioned by Gilmore had been consummated, witness answered: "He told me it was done, that they had agreed to quit and that it was final; that was reiterated to me and Mr. Weeghman and Mr. Ward confirmed it right there." Witness was told the agreement had been consummated a few days before the 16th of December; that Gilmore told witness there were a lot of details to be fixed up and that Baltimore could doubtless be taken up as a part of that, "and we said we did not want to be taken in as a part of the details, that we had been put in this situation by their action, and

that is where the bitterness came in." Witness was told by Gilmore that Brooklyn, Chicago and Newark had all agreed upon the terms (referring to memorandum) and Pittsburgh. Mr. Sinclair said that no provision was made for Newark, but nevertheless he had
511 agreed to terms and he made a great protestation about not knowing how he would come out. That Newark was not named in the agreement but Sinclair was named as one of the parties to it,—he owned the Newark Club—but witness does not know whether he was President or not. Sinclair is stated in the Peace Agreement to be a part purchaser of the Chicago Club. Later in the day on the 17th, during the afternoon sometime, witness saw Mr. Herrmann, President of the National Commission, at the Waldorf, and witness told him the Baltimore Club was in a very unfortunate situation and that they had been put out of business by this agreement—and Mr. Herrmann stated he realized that, but that the Baltimore Club's rights would be taken up and dealt with in a very fair way by the National Commission; that witness told him they wanted to continue in business, that a large portion of the Baltimore people desire to have a first-class Base Ball Club in Baltimore in competition with other cities of its own size and that it was a public question there—and asked what arrangements could be effected to have that consummated and whether or not in the general adjustment Baltimore should not be given a team of proper calibre to represent it; that Herrmann stated it might be consummated and he would consider it and that he had in mind the possibility of the St. Louis National League franchise being transferred to Baltimore, but that that was a matter that the gentlemen of the respective Leagues would have to determine and this might be taken up at a later meeting; that it was assumed in this conversation with Herrmann that the agreement was a consum-ated fact, that about nine o'clock in the evening of the 17th Mr. Matthews, sporting editor of the Baltimore Sun, came to witness at the Biltmore and asked him to hurry across to the Waldorf and got witness to accompany him stating that it looked as though Baltimore could get a National League franchise if witness went over there and asked for it; Mr. Matthews was a sporting writer and intensely interested in having baseball continue in Baltimore. When witness got to the Waldorf he was imme-
512 diately ushered into a room full of people who were evidently in a meeting, that Mr. Herrmann was presiding and there were present the representatives of both the American and National Leagues and also Mr. Gilmore, Mr. Sinclair and Mr. Weeghman. That Mr. Rasin met witness at the door and stated the situation was such that if witness asked them for a franchise for Baltimore there would be a good chance of getting one; that the meeting was not in actual session at that time; there was a recess. The meeting was called to order in a few minutes and the Chairman then stated he understood there was present a representative of Baltimore and that they would be glad to hear from him. Witness was a little at a loss to know exactly what line to take, as he had not been present at the previous part of the meeting, but made a statement to the meeting endeavoring to set forth Baltimore's rights in the very public ques-

tion of base ball, showing the size of the City and its rights to be considered as having a right to representation in any League that was to operate in the big cities of the country, but this suggestion was received with ridicule and nothing was or could be evidently accomplished in that direction. That Mr. Herrmann stated, however, that in view of what had gone on Baltimore's rights would receive very considerate and fair consideration by the National Commission and that the matters would be decided in Cincinnati or at some further meeting; and that matter was then passed away from; that before all this was consummated a great deal came up about the Landis suit, into which witness was brought, being a lawyer, and he was asked whether anything could be done in view of the suit pending in Chicago before Judge Landis, and witness expressed the opinion that the usual way to adjust or arrange litigation was to agree tentatively and then ask the Court for a dismissal of the suit. There was some suggestion that the suit be dismissed first, but witness could not consent to that. No settlement had been made with the Baltimore club, although Mr. Herrmann had said that settlement
513 would be made; that witness did not state to anyone or at the meeting at the Waldorf that he was there to represent the plaintiff club in regard to the perfecting or the carrying out of the agreement which Mr. Gilmore had told him about in the morning.

Q. Did you say to anyone there you had authority to represent the Baltimore Club for any such purpose? A. No, and I did not make any statement about that at all. I simply went into the room, and Mr. Herrmann stated that a representative of Baltimore was there to make a statement, and I was pushed forward and I started off on this statement. Asked for what purpose he went to the meeting at the Waldorf and in what capacity, witness answered, "I should think that would be rather a question of law. I don't know myself. I was there personally interested in having what I considered major league baseball in Baltimore. I was also of counsel for the Baltimore Federal League Club, and I wanted to get a settlement offered to make good the situation for the Federal League Club, which I could bring back to the Baltimore League Club and present to the corporation. I also wanted to get for the citizens of Baltimore the character and style of baseball, in competition with cities that it would be a matter of pride for them to compete with. It was under those circumstances that I went there urging the claim of Baltimore. In a sense, I had represented the Federal League Club and, of course, I was open to receive any suggestion that might come for settlement of the Federal Baseball Club of Baltimore's claims, and I had in mind doubtless that there might be some adjustment if a new franchise was granted in a re-constituted League properly formed, which would enable me or enable anyone who took it up to arrange with the stockholders of the Federal League Club to participate in; but these events were piling
514 upon themselves so rapidly that naturally I did not have any exact plan mapped out nor did I know what was going to occur when I went in there. That by stockholders he meant the

stockholders of the plaintiff club. That prior to going to New York on December 17th, the matter of taking a franchise in either the American or National League had never been before any meeting of the board of directors or of the stockholders of the plaintiff club, and that when he went to New York he did not have any authority from said club to make the proposition that it would settle whatever claims it might have growing out of the destruction of the Federal League for any such consideration, as the plaintiff club did not have any meeting of its stockholders or directors to take any action; it could not possibly have had a meeting on this matter, because it had only come up on the 17th of December, and the whole matter was concluded on the same day, and at no time prior to that had any such matter even been discussed at any meeting of the plaintiff corporation. That witness returned from New York on the night of December 17th, but did not at that time make any report to the plaintiff club of what he had learned in New York; that there was a meeting on November 23, 1915, of the executive committee of the plaintiff club and the next meeting of the stockholders was held on the 27th of January, 1916; asked if there was a meeting of the board of directors, the executive committee or the stockholders of the plaintiff club between those dates, witness, after referring to the minute book, answered, "No," and that he did not recall any such meeting between those dates. On December 22nd, upon a telephone call, witness went to the office of the plaintiff club in the Union Trust Building, where he found Mr. Rasin, the President, and Mr. Goldman, one of the counsel for the club, and witness was advised that there was a long distance call in from Mr. Gilmore, out in Cincinnati, and wanted him to be there, that when the call came in witness was asked to talk over the phone and he recognized the voice of Mr. Gilmore at the other end, who stated he was
515 in Cincinnati at a meeting of the American and National League representatives in connection with a settlement; that witness asked Gilmore what he wanted to say, and Gilmore said "would the Baltimore Club take $50,000 in settlement, keep the ball grounds and the ball team. I answered right off the bat that unquestionably they would not; that the ball team would be a liability and not an asset, under those circumstances, and that the grounds would be a liability and not an asset." That Gilmore then asked witness what he wanted and witness said, "If you bring us a proposition of $75,000 and you take the ball team and the grounds, then we might consider it." That Gilmore went away from the phone for a while and then he called up again in about fifteen minutes and said: "There is nothing doing on that. You better take the other." Witness said, "No, we will not take the other." Gilmore said, "Well, what are you going to do about it?" and witness replied, "Well, we just won't settle; that is all." Gilmore said, "What do you mean?" and witness answered, "Well, we won't dismiss the suit in Chicago and we will go on and stand on our rights." Gilmore said "It does not seem to me you have any rights. All the others have stopped." Witness replied, "Perhaps it looks that way, but

at the same time we are going to stand on our rights, whatever they are, if you don't make a satisfactory settlement," and then Gilmore rang off and that was the end of the conversation.

Witness then identified two telegrams dated December 22, 1915, signed by Ritchie, Janney & Griswold, one addressed to K. H. Addington, Chicago, Illinois, and the other to Edward E. Gates, Indianapolis, Indiana, advising them that plaintiff club was party to the proceedings before Judge Landis and objected to the dismissal of the suit until further instructions from them; and also identified a telegram dated December 22, 1915, signed by Ritchie, Janney & Griswold to Clerk of the United States District Court, Northern District of Illinois, Chicago, advising him of the possibility of counsel dismissing case of Federal League of Professional Ball Clubs against the National League and others pending in his Court, that plaintiff club was a party and did not wish proceedings dismissed without its consent and if necessary for purpose to show telegram to Judge Landis. Witness further testified that he thinks the telegrams were sent on the date mentioned and after his talk over the phone with Gilmore, for the reason that in view of the fact witness' firm was not employed as counsel in the Federal League suit in Chicago that the counsel employed might dismiss the suit and bind the plaintiff club, and witness wanted to be sure suit was not being dismissed; that while the plaintiff club was a party to the suit it was not represented individually by counsel but by counsel for all the clubs.

516

That after the sending of the telegrams witness thinks he had some correspondence with Mr. Gilmore in regard to matters connected with the suit and identified a letter which was offered in evidence as a part of his deposition, dated December 23, 1915, and which was dictated by witness, signed by Rasin, President of the plaintiff club, and sent to Mr. Gilmore—said letter being in the words and figures following:

"DEAR SIR:

The Baltimore papers carry Associated Press dispatches, which state that a positive agreement has been reached and signed between the Federal League and the National Commission.

I do not believe this can be possible, as the Baltimore Club has not assented to any terms which would enable a settlement to be made, and of course it is very clear that no settlement can be effectively made without the consent of one of the constituent members of the League.

Of course, it has not escaped your attention that a very serious litigation is pending in Chicago before Judge Landis, which must be determined or disposed of before it would be possible for any members of the Federal League to join that organization under attack, unless the fundamental agreements on which the organization is founded be materially changed, and for any members of the Federal League to join organized baseball would, if conditions are not changed, be a serious emphasis upon the monopolistic

517

character of the organization, particularly true if this involved the aband-ment of the other members of the Federal League and the destruction of the property values dependent upon the organization as a whole.

"Under the above circumstances, I shall be obliged if you will communicate immediately the result of your conference in Cincinnati, so that we may understand our position and know the details of the new organization.

"I have in the meantime given proper instructions that the suit pending in Chicago shall not be disposed of without the consent of the Baltimore Club, which as you recall is a party to those proceedings."

Witness further testified that on the morning after December 22nd the newspapers were full of the statement that a final agreement had been consummated between various members of the Federal League but that they had received no word that settlement of Baltimore's claims had been made.

Thereupon witness was shown, identified and there was offered in evidence as a part of his deposition a letter addressed to Carroll Rasin, Baltimore, Md., dated Chicago, December 24th, 1915, signed J. A. G., meaning James A. Gilmore, which was in words and figures following:

"My Dear Carroll:

"Have been under the weather for three days consequently have not had an opportunity to advise you of the peace pact which
518 was signed at Cincinnati.

"It seemed impossible to arrive at some conclusion relative to the Baltimore situation, and finally it was suggested that it be placed in the hands of a committee for final decision. This committee is to consist of myself, a representative of the Baltimore Club, you may choose, a representative of the Buffalo Club, Messrs. Herrman, Tener, and Johnson and Barrows, with the understanding that the majority vote will decide the question.

"I can say for Mr. Sinclair and myself that fair treatment will be given by the members of the National Commission. Mr. Dunne was given an audience and it was the opinion of all the members of the National Commission that his demands were absolutely unreasonable. I am going to try to have this meeting held in New York the first week in January so suggest that your Board of Directors delegate someone with full authority to close the matter. Mr. Sinclair and myself argued for hours in an effort to give you the kind of a settlement you said you were willing to take, but we could not make Mr. Dunne agree with us, consequently we came to the conclusions as above stated, and you need have no fear about the Baltimore Club receiving fair treatment.

"With kindest personal regards to you and your associates, and wishing you a Merry Xmas and a Happy New Year, I am,

Sincerely yours."

——— ———.

Witness identified two telegrams signed "C. W. Rasin" addressed to James A. Gilmore and dated respectively December 28, 1915, and December 30, 1915, and stated that the same were dictated by witness in the presence of Mr. Rasin; and also identified two telegrams addressed to C. W. Rasin and signed by James A. Gilmore, dated respectively December 31, 1915, and January 3, 1916, which were received by Mr. Rasin. Said telegrams were offered in evidence as a part of witness' deposition and are in the words and
519 figures following:

Dec. 28, 1915.

"I cannot understand your position. Send copy of what you signed and full details of all agreements with any other Federal League Clubs or individuals. We must immediately know what has been done as our rights are of course greatly affected."

Dec. 30, 1915.

"Please advise if for any reason Cincinnati conference is postponed. Also advise where it will be held."

Dec. 31, 1915.

"No definite date decided on for Cincinnati meeting. Will notify you in time."

Jan. 3, 1916.

"Committee to adjust Baltimore affairs meets Cincinnati Sinton Hotel noon January 5th. Be sure and have authorized representative present. Answer."

Witness then identified a letter addressed to Carroll Rasin, Baltimore, Maryland, dated Chicago, December 28, 1915, signed "J. A. G., Pres." and the same was received and offered in evidence as a part of his deposition, being in the words and figures following:

"DEAR SIR:

"Wish *the* acknowledge receipt of your telegram of even date.

"I endeavored to explain in my previous letter just what was accomplished in Cincinnati; in other words a conclusion was reached in reference to all matters excepting Baltimore and Buffalo.
520 The disposition of these two matters was placed in the hands of a committee of seven to decide and I understand this committee will meet at Cincinnati, Monday, January 3rd, and as I suggested, think it advisable that your stockholders or directors delegate someone with full authority to act.

"I have a copy of the agreement which was executed and shall be glad to show it to you or some authorized representative of your club. But a distinct understanding was had that no copies were to be given to anyone. The presidents of the three leagues and

the chairman of the National Committee have copies. All other copies were destroyed."

Witness also identified a telegram dated New York, January 4, 1916, signed "J. A. Gilmore" and addressed to the plaintiff club at Baltimore, Md., which was offered in evidence as a part of witness' deposition, being in the words and figures following:

"Do not fail to have authorized representative at meeting Sinton Hotel Cincinnati, tomorrow noon. Wired Rasin last night."

Witness then identified letter date December 28, 1915, addressed to James A. Gilmore, President of the Federal League, which he stated was dictated and signed by witness, and the same was offered in evidence as a part of his deposition being in the words and figures following:

"DEAR SIR:

"Mr. Rasin has handed me your letter of December 24th, advising that you have signed what you call a 'Peace Pact.'

"Of course, you realize that any terms agreed upon on behalf of any of the Federal League Clubs or of the owners vitally affect the Baltimore Club, which is entitled to know exactly what has been done so as to judge what position it should take. The Baltimore Club therefore requests you to send this information immediately.

521 "With respect to the conference you suggest, the Baltimore Club will be glad to send a fully authorized representative to New York to discuss the situation with the others you mention, but will not of course submit its rights to the binding decision of a committee or of the majority of a committee, in which its representation is only a minority. It is important for us to know very promptly whether under these circumstances we should wait any further invitation to discuss matters or whether we should proceed independently to protect our interests. We will thank you, therefore, to advise us fully on receipt of this."

Witness then identified a letter dated January 3, 1916, addressed to August Herrmann, Esq., Chairman, National Commission, Cincinnati, Ohio, signed by witness in the firm name of Ritchie, Janney & Griswold, and sent to Mr. Herrmann, which was offered in evidence as a part of his deposition, being in the words and figures following:

"DEAR SIR:

"The Federal Baseball Club of Baltimore, Incorporated, the representative in Baltimore of the Federal League of Professional Base Ball Clubs, advises us that the National Commission, representing the American League, the National League and the minor leagues, constituting what is known generally as organized baseball, have through the National Commission effected what is called a settlement or a peace agreement with certain of the constituent members

of the Federal League, and the press throughout the country have been carrying dispatches to the same effect. We have also been informally advised of this fact by James A. Gilmore, the President of the Federal League of Professional Base Ball Clubs.

"The Baltimore Company referred to above has further informed us that they were not a party to this so called peace agreement, nor are they acquainted with its terms, although, as you are aware, they are familiar with the fact that an effort was being made by some parties to bring about an agreement that would be satisfactory to all and in accordance with the law, for which purpose a meeting was held in New York, at which you were present and at which
522 the Baltimore Club was represented.

"The Baltimore Club informs us that although they are credibly advised that this agreement has been actually signed, there have been no proposals submitted to them for approval, nor have they been taken into the confidence of those engaged in these negotiations. As their financial interest in the continuance of the Federal League is very large and as this financial interest will be gravely and seriously imperiled by the purchase of the defection of some of the constituent members of the Federal League by the interests represented by your Commission, we have advised the Baltimore Club that they may properly hold the parties to the peace agreement and those represented by the delegates and your commission responsible for what damage may be occasioned them by the elimination of this competition in the way indicated above, and they have requested us to acquaint you with our conclusion in this regard.

"The officers of the Baltimore Club have been informally advised and the press has carried reports to the same effect, that a conference will shortly be called, in which the Baltimore interests will be invited to participate, for the purpose of working out some satisfactory adjustment of the present situation, which is of course disturbing to them. The Baltimore Club, under our advice, will gladly participate in such a conference, but it is of course necessary that this should be promptly held, as the representatives of the Club are obliged to safeguard the rights of its stockholders and would dislike, in the performance of this obligation to take any stand which might be entirely unnecessary on account of the intention of your Commission and those represented by it to make a satisfactory adjustment of this condition.

"We would thank you to advise us at your early opportunity, whether we are justified in assuming that this conference will be shortly held for the purposes above mentioned, and as soon
523 as possible to advise us of the time and place of holding the same."

Witness identified a telegram dated January 4, 1916, addressed to August Herrmann, signed by Ritchie, Janney & Griswold reading as follows:

"Since writing our letter of yesterday we have received from Gilmore notice of a conference in Cincinnati tomorrow and a represent-

ative of the Baltimore Federal League Club will attend as requested," and stated that this telegram was sent by witness.

Witness then identified a letter dated January 3, 1916, addressed to Carroll Rasin, signed by J. A. G., meaning James A. Gilmore, stating that the same was handed to witness by Mr. Rasin, said letter being offered in evidence as a part of witness's deposition and in the words and figures following:

"DEAR SIR:

"Please give me by return mail a complete list of the players under signed contract for 1916 noting whether or not the ten day clause is eliminated and showing the amount of money advanced, if any, together with their salaries. Also give me list of the players whose contracts expired at the end of the 1915 season and list of those you notified previous to Sept. 15 that you wanted their services for 1916.

"Also give me a complete list of the players who have ever been under contract with your club during the existence of the Federal League together with those to whom you are willing to waive all claim.

"I want this list so that we can notify the players and give them every opportunity to obtain employment among the minor leagues or elsewhere. Such players are entitled to this notification at an early date and the sooner we give it to them the better."

Witness identified a letter dated Januray 10, 1916, addressed to August. Herrmann, of Cincinniti, Ohio, signed and sent
524 by witness to Mr. Herrmann, which was offered in evidence as a part of the deposition of witness, being in the words and figures following:

"DEAR SIR:

As you doubtless are aware, the stockholders and directors of the baseball club in this city, and also the public, have become very anxious concerning the situation. You expressed yourself to the writer when in Cincinnati to be willing to come to Baltimore on your way to New York and talk the matter over with us, and I am writing this to suggest to you that if you can possibly do so, it would be advisable for you to make the trip some time before the meeting which I understand you are to hold in New York on the 19th of January. It seems to me that you ought to have our situation fairly in mind before this conference, and that you should have the opportunity to discuss it with your associates in advance of the meeting.

The matter is a serious one from every point of view and I think its importance warrants me in asking you to go to the trouble of this trip.

"Please let me know whether you agree with me, and if so, when we can expect you."

Witness identified a letter addressed to Stuart S. Janney, signed by A. Herrmann, dated January 12, 1916, and stated said letter was received by witness. This letter was offered in evidence as part of the deposition of witness, being in the words and figures following:

"DEAR SIR:

Your letter of Jan. 10th just received. Replying thereto would state that I am of the opinion we will not have a meeting in New York on the 19th as nothing new has developed which would warrant us in getting together at that time. I am waiting a call from the East for this meeting and until it is received cannot state
525 definitely whether I can stop off at Baltimore or not.

Witness identified a letter dated January 13, 1916, addressed to August Herrmann, and stated the same was signed and sent by witness to Mr. Herrmann. Said letter was offered in evidence as a part of witness' deposition and is in the words and figures following:

"DEAR SIR:

"I have your letter of January 12th.

"I had understood from you and from Mr. Gilmore that the object of the proposed meeting on January 19th was the determination of a proper settlement to propose to the Baltimore Federal League Club. I am, therefore, surprised that the meeting should be postponed for the reason that 'nothing new has developed which would warrant you in getting together.'

"It is, of course, obvious to you that, in the absence of definite and proper provision being made for the stock-holders of the Baltimore Club in the amalgamation resulting in the elimination of the other clubs of the Federal League, it will be the duty of the Directors to take immediate action for their protection. The stockholders of this Club have been called to meet on the 25th of January, and if any proposal is to be made to us it should be made before that time, as the circumstances will not warrant further delay."

Witness identified a letter dated January 15, 1916, addressed to Stuart S. Janey, signed by A. Herrmann, which was offered in evidence as a part of witness' deposition, reading as follows:

"DEAR SIR:

"Your letter of January 13th just received. My suggestion would be that you take up your matter direct with Mr. Gilmore or Mr. Sinclair. I have heard nothing from the East since our meet-
526 ing here last week," and stated that witness received said letter and that the signature thereto was Mr. Herrmann's.

Witness identified letter dated January 26, 1916, addressed to Carroll Rasin, signed J. A. Gilmore and stated that the same was turned over to him by Mr. Rasin. Said letter was offered in evidence as a part of the deposition of witness and is in the words and figures following:

"DEAR CARROLL:

"On January 8th Messrs. Gwinner, Sinclair, Will Ward and Comstock happened to be in the office and we discussed the financial standing of the League. I told them that our obligations were $61,721.73 which pro-rated among the six clubs in good-standing would necessitate an assessment of $10,300 to each club. There being many pressing obligations, the gentlemen referred to gave $10,300 a piece. Mr. Sinclair in addition paid the assessment for the St. Louis Club. Mr. Weeghman informed me over the phone that day that he would be very glad to pay his share in order to wipe out the financial obligations of the League and thus retire in an honorable way, and since then he has arranged with Messrs. Addington and Gates to pay them and the League is to get receipts from them. Therefore, the only remaining bills are those which cover the amount of your assessment and I would appreciate it if you would arrange to pay same.

"Of course, you understand that this assessment has not been made in a legal way as no meeting has been held but it is my intention to call a meeting of the Board of Managers as soon as Mr. Ball returns from Texas and have the assessment made in a legal and proper manner.

"I have notified Mr. Herrmann, Chairman of the peace committee, that he must get the members together and decide upon something relative to Baltimore and Buffalo and I expect to hear from
527 him in a day or two and will keep you thoroughly posted.

"With kindest personal regards and hoping that the adjustment of our affairs has not created any ill-feeling between our associates, I remain,

Yours very truly"

Witness identified a letter dated January 28, 1916, addressed to James A. Gilmore, President, Federal League, and stated that the same was dictated by him but signed by Mr. Rasin, President of plaintiff club. Said letter was offered in evidence as a part of deposition of witness and is in the words and figures following:

"DEAR SIR:

"I have your letter of January 26th, advising of action taken by Messrs. Gwinner, Sinclair, Ward and Comstock in the matter of the indebtedness of the Federal League.

"You will, of course, understand that while this Club has been officially informed by you and others that the Federal League has been discontinued on account of settlements made by the constituent members, other than ourselves, with organized baseball, and that a peace agreement has been signed, we have yet to receive a copy of the documents carrying out this settlement. We are, however, very fully advised of the fact that the Baltimore Club has effected no settlement, but that its business has been destroyed through these various treaties and adjustments which have been made without our co-

operation. Under these circumstances, it is very clear that this Club would not be justified in responding to your request to send you $10,300.00.

"We quite understand that this so-called assessment has not been made in a regular way, and we concur with you in this opinion. We will doubtless hear of any meeting of the Board of Managers which you may call in the future to consider this or any other matter concerning the affairs of the League.

528 "I am very glad indeed that you have notified Mr. Herrmann that he must get his associates together and decide upon something relative to Baltimore.

"Our stockholders met yesterday and I made to them a full report of the condition of the Club up to this time, a copy of which I am sending you herewith, as it was printed in the daily papers. From this you will perceive that it is necessary for us to act very promptly, and any proposals to meet the impossible position in which we are placed should be forthcoming within a very few days.

"Of course, it is not to be expected that our people here should entertain the kindest feeling for those who have assisted in bringing about the present very unfortunate situation. I only hope that I am wrong in sharing to a certain extent that feeling, and that the immediate future may prove this to be the case."

Witness then identified a telegram dated February 15, 1916, addressed to Carroll Rasin and signed J. A. Gilmore, reading: "Please extend courtesy of reply my letter regarding meeting Chicago Saturday"; and stated the same was received and handed to him by Mr. Rasin.

Witness identified a telegram dated February 16, 1916, addressed to Carroll Rasin and signed Gilmore, reading: "Meeting postponed until next week. Will advise later."; and stated the same was received and handed to him by Mr. Rasin.

Witness also identified a telegram dated February 24, 1916, addressed to Carroll Rasin and signed J. A. Gilmore, reading: "Do not fail to attend meeting. Everybody will be there."; and stated that the same was received and handed to witness by Mr. Rasin.

Witness identified a letter dated February 24, 1916, addressed to James A. Gilmore, President of the Federal League, and stated

529 the same was signed by Mr. Rasin and sent to Mr. Gilmore at the La Salle Hotel, Chicago, where they had been notified the meeting would be held. Said letter was offered in evidence as a part of deposition of witness and is in the words and figures following:

"DEAR SIR:

"I have your letter of February 19th, advising that a meeting of the Board of Managers of the Federal League of Professional Base Ball Clubs will be held at the La Salle Hotel, Chicago, at eleven o'clock on Saturday, February 26th, for the purpose of taking 'action on various matters which will enable us to wind up the affairs of the organization.'

"We have been informed by you by letter and in person (and

your present notice confirms this), that all of those members of the Federal League of Professional Base Ball Clubs in good standing, with the exception of the Federal Base Ball Club of Baltimore, have entered into such agreements with organized baseball as to prevent the further carrying out of the purposes and objects of the Federal League, and have thereby repudiated their obligations to the said League and have forfeited the standing of their representatives as Managers. In consequence the representative of the Federal Base Ball Club of Baltimore and the said corporation decline to participate further in the deliberations of such a body, and to be bound by any of its acts or determinations.

"Furthermore, the League itself, if it sanctions the illegal agreements effected by the various constituent members, will thereby assist in the destruction of the business of the Federal Base Ball Club of Baltimore, Incorporated, and its liability therefor will be insisted upon."

Witness identified a letter dated February 11, 1916, addressed to Carroll Rasin, signed J. A. G., and stated it was the signature of James A. Gilmore; and that said letter was received by Mr. Rasin and handed to witness. This letter was received and offered in evidence as a part of the deposition of witness, being in the words and figures following:

530

"DEAR SIR:

"I am enclosing herewith notice of meeting to be held at the La Salle Hotel, February 19th. It is my wish and desire to wind up the affairs of the organization and I trust that you will deem it of necessary importance to be present as I am anxious to have all the members of the Board present so that all questions can be discussed and the necessary action taken. This will be the final meeting of the organization.

"I would appreciate it very much if you would wire me upon receipt of this notice as to your intentions in the matter."

Witness identified letter dated February 19, 1916, addressed to Carroll Rasin, signed by J. A. Gilmore, and stated the same was received by Mr. Rasin and handed to him. Said letter was offered in evidence as part of witness' deposition and is in the words and figures following:

"DEAR SIR:

"A special meeting of the Board of Managers of the Federal League of Professional Baseball Clubs will be held in the city of Chicago, at the La Salle Hotel at the hour of 11 A. M. on the twenty-sixth of February, 1916. The said meeting being for the purpose of transacting all necessary business in order to properly wind up the affairs of the organization.

It is very important that all members attend.

Yours truly,

(Signed) "J. A. GILMORE,

"*Pres.*

"P. S.—I will personally appreciate it if you will arrange your affairs so that you can attend this meeting as I am extremely anxious to conclude all matters and want a full attendance of the Board Members.

(Signed) "J. A. G."

Witness further deposed that he went to Cincinnati in January, 1916,—the correspondence offered in evidence shows the occasion for his going; that Mr. Rasin had sent a telegram saying a representative would be in Cincinnati at the meeting being held by the National Commission; that Judge Goldman, secretary of the club, and witness went to Cincinnati, arriving there on January 5th, he thinks; that they went to the hotel in Cincinnati where they saw a number of representatives of Organized Base Ball, including Mr. Herrmann, Mr. Tener, Mr. Johnson and several others, at a distance; that witness did not see them personally until late in the evening; that during the day Mr. Gilmore came to see witness and asked him if he was prepared to go into the meeting of the committee to consider plaintiff Club's settlement and also asked who were the representatives of the Baltimore Club officially to be at the meeting. Witness asked what the powers of the committee were and how it was constituted, and Gilmore read to witness from a typewritten paper, which he took from his pocket, a paragraph of the agreement signed in Cincinnati on December 22nd, which paragraph purported to create a committee to determine the rights of the Baltimore Club to finally settle them in view of the present situation, and that a majority of the committee were representatives of Organized Base Ball. Witness told Gilmore he would not for one moment submit the Baltimore Club's rights to that committee as a quality, but that he was there to receive any suggestion or any proposal they might make. That the Committee consequently never met. Witness then had an extended conversation with Mr. Gilmore who said among other things that "we were making a mistake"; that witness retaliated by informing Gilmore that "I thought we had made a very great mistake in making the settlement that he had made in New York without informing us that he had violated our rights and been recalcitrant to his duty as President, and had made himself subject to serious charges," and witness also told him that the Baltimore Club did not propose to fritter away its rights under the circumstance- but "might either compel an accounting from those in the Federal League who had received money in consideration for stopping business or hold all parties concerned liable for damages under the Sherman Act." Gilmore stated that they had to maintain secrecy about the negotiations as otherwise they would have been impossible or would have fallen through and that he and Mr. Sinclair had advised together about it and he was sorry witness and the others did not like what was done, but that it had been done and there was no other way to do it; that Mr. Robertson, one of the owners of the Buffalo Federal League Club, entered into the conversation and stated that he concurred in my view of the situation to Mr. Gilmore, and thoroughly understood my position and asked my advice as

to what he ought to do under the circumstances. Witness gave him none, as his position was quite different, but witness had a friendly talk with him. That witness did not tell Gilmore in figures at that time what damages the plaintiff club had sustained by reason of the action of the Federal League and Organized Base Ball; he showed him in a general way; witness did not have to tell him; the nature of the damages discussed were the destruction of the business altogether, the loss of the utility of the players who were under contract, the loss of the utility of the grounds which they had spent some ninety thousand dollars to improve and the loss of all franchise value in the Federal League by its dissolution. That witness visited Chicago on a later date and after considering the matter, and determined that the Chicago suit, being in equity rather than at law, was not available for their purpose, dismissed it without prejudice—that was sometime in the early Spring of 1916.

When in Cincinnati witness saw Mr. Herrman in the hotel as he was leaving and Herrman came across and shook hands with him. He asked witness if he was going and witness said yes, he was leaving for the train, and Mr. Herrman said: "Well,
533 I want you to understand that you will get for Baltimore a perfectly fair settlement of this situation, and do not be anxious about it"; that Judge Goldman was there at the same time and heard this statement; that witness said nothing in reply to Herrmann except "Good-bye" and that witness was glad to hear Herrmann was going to make them a proposal. That nothing resulted from witness' trip to Cincinnati and meeting with Mr. Gilmore; that when witness declined to submit the rights of the Baltimore Club to the committee that was constituted, that apparently ended the matter. "They declined to make any proposal or anything of that sort then, and that ended it." That Mr. Rasin, as President of the plaintiff club, made a report dated January 27, 1916, to the stockholders of said Club, which witness drew, and which covered largely everything that had been accomplished. That was the first meeting of the Stockholders or directors which had been held since November.

Thereupon there was offered in evidence as a part of the deposition of witness the minutes of a stockholders' meeting of the plaintiff club held on January 27, 1916, and the report of President Rasin to the stockholders of said club, as contained in its minute book—said minutes and report being in the words and figures following:

"Minutes of the special meeting of the stockholders of the Federal Base Ball Club, Inc., held according to notice hereinafter set forth and for the purposes named therein, at the office of the Company in the Union Trust Bldg., on the 27th day of January, 1916, at 3 o'clock P. M.

"The President, Mr. Carroll W. Rasin, presided at the meeting and Mr. Harry Goldman acted as secretary.

"The President appointed Mr. E. L. Pitroff and Mr. —— ——, a committee on proxies to ascertain whether a quorum was present.

"The Committee reported that there were represented at
534 the meeting 9212 shares of the preferred stock and 10954 shares of the common stock, and that the proxies had been duly verified and were filed with the secretary. The list of stockholders by proxies was duly tabulated and the list is among the files of the secretary.

"The Committee then announced that a quorum of the stockholders was present and the call of the meeting was then read. The Secretary stating that the notice had been sent to each stockholder at the address on the books of the company, more than 10 days prior to the meeting, said notice reading as follows:

"'Baltimore, Md.,
"'January 15, 1916.

"'A special meeting of the stockholders of the Federal Base Ball Club of Baltimore, Inc., will be held at the offices of the company, at 205-206 Union Trust Building, on Thursday, the 27th day of January, 1916, at 3 o'clock P. M. for the purpose of considering the affairs of the corporation, and authorizing proper action for the protection of the stockholders' interests.

"'By order of the President.

"'HARRY GOLDMAN,
"'*Secretary.*'

"The minutes of the previous meeting were dispensed with upon a motion duly seconded.

"The President read a lengthy report to the stockholders after which the following resolution was unanimously adopted.

"Be it resolved: that the report of the President and Directors submitted this day be accepted, and that the same be spread on the minutes of this meeting.

"Be it further resolved: that the Board of Directors be and they are hereby authorized, to take any and all steps in their discretion, to protect the interests of the stockholders of this
535 corporation, by litigation in such form as they deem advisable, or in any other manner.

"Be it further resolved: that the Board of Directors be and they and hereby authorized, to sell or otherwise dispose of the leasehold estate of this corporation in the base ball park, situated at York Road and 29th Street, and all of the improvements and appurtenances thereto, upon such terms and for such consideration as they in their discretion shall deem adequate and fair.

"Be it further resolved: That the Board of Directors be and they are hereby authorized, to provide in such manner and upon such terms as they shall deem proper the sum of $50,000, which sum or any part thereof, they are hereby authorized to appropriate to pay the expense of litigation or of otherwise protecting the rights of the stockholders of this corporation.

"And be it further resolved: that the Board of Directors be and they are hereby authorized, to settle upon such terms as they deem

adequate and proper, the various claims of this corporation for damages, arising out of the destruction of its good will, franchises, rights, property *and* etc.

"Upon motion of Mr. Meyers duly seconded by Mr. Strouse, that the President appoint a Committee of three to act in behalf of the stockholders, in conjunction with the board of Directors, this motion was unanimously adopted, and the President stated he would appoint the Committee within a short time.

"There being no further business, the meeting adjourned.

(Signed) "HARRY GOLDMAN,
"*Secretary.*"

536 "To the Stockholders of the Federal Baseball Club of Baltimore, Incorporated:

"Owing to the unprecedented condition existing in baseball at present, and to the fact that many conflicting statements and reports have been published in the Press concerning this condition, and concerning the part the officers of this Club have taken therein, and the policy that this Club will pursue because of it, the Board has thought it wise to call you together in order that your President might acquaint you with actual conditions and that the management may be instructed as to the proper course to pursue.

"It is necessary to summarize the history of the organization in order to discuss intelligently the present condition.

"A group of citizens of Baltimore, most of whom are represented on your Board of Directors, were offered a franchise in the Federal League of Professional Base Ball Clubs in the fall of 1913. A careful investigation showed that while the League had been in existence during one playing season it had made little progress, and its name was hardly known to the public at large, but that the nucleus thus formed in 1913 had attracted to the enterprise a large number of citizens of substantial means who expressed the intention of establishing a League, which should ultimately become established and known to be of the first rank or what is ordinarily called a major league.

"The franchise offered was ultimately accepted—those who first joined the venture, as well as those who have come in at a later date, have always felt that the City of Baltimore should have the opportunity to compete in the national sport with cities of equal size and importance, and that the public of this city would give to a good team, furnishing high class exhibitions, sufficient support to make the venture commercially expedient.

"The stock of the corporation was offered to the public and about six hundred citizens of Baltimore availed themselves of
537 the opportunity and purchased the shares that were offered. The Clubs organized in the other cities constituting the circuit, reported themselves to be adequately financed. The best available players were acquired by all of the club owners, and the playing season of 1914 was inaugurated under peculiarly happy auspices.

"During the playing season of 1914 the total attendance at Federal League games in Baltimore was second only to that of Chicago

and the conclusion from the figures is irresistible that with real major league playing strength and with the prospect of possible world's series contests Baltimore would patronize major league baseball as well as any City of equal population.

"During the playing eason of 1915 the Team was hopelessly last in the race, and was producing games of very mediocre calibre, nevertheless the patronage of the public was surprisingly liberal.

"In starting the Federal League as a major circuit many mistakes were doubtless made—and your management desires to avoid no part of the responsibility for errors and omissions, that almost invariably occur, in beginning a new business—in the face of keen and expert opposition.

"Bonuses were paid to players and long term contracts at high salaries were accepted, in a sincere effort to give the public the best quality of ball. Often times these highly advertised and highly paid players were not in reality the best, and the large outlay became a useless expense.

"With salaries on the basis they reached in 1914 and 1915 it was not possible that the enterprise would be an immediate financial success, but we did confidently hope that the League would become established, and that after three years when all contracts expired, the pay-roll could be reduced so as to bear a fair relation to revenue, with expenses thus reduced and with the acquisition of young
538 players and their development, some reasonable return could be expected from the investment.

"In all their efforts and aspirations this Club had the heartiest support of Mr. R. B. Ward, the owner of the Brooklyn Club, a man of large means and most unquestioned courage and honor. Unfortunately Mr. Ward's death occurring on October 18th, 1915, removed from the League its most courageous and determined spirit in the most critical period of its history.

"On November 9th, 1915, a meeting of the Board of the Federal League was held in Indianapolis. Your President and counsel attended and while no report was made to the Board, it was quite evident that some members of the League were in independent negotiations with the representatives of Organized Base Ball. Messrs. Gilmore, Weeghman and Sinclair admitted they had talked with representatives of the American and National Leagues, but stated that there was nothing to report and the talks had been to no purpose and of no effect.

"At a previous meeting of the Federal League a Committee, consisting of Messrs. Weeghman, Ball, Gilmore, Sinclair and R. B. Ward, had been appointed to confer with organized baseball representatives, for the purpose of proposing some readjustment of the baseball situation, but with no power to act. This Committee did not report. The meeting after transacting routine business adjourned.

"On December 16th, 1915, your President received word to meet in New York on the following day to discuss peace and to protect Baltimore's interests. A number of your directors accompanied him to New York, where a conference was held between Messrs. Gilmore,

Sinclair, William Ward, Weeghman, a representative of Pittsburgh and of St. Louis, and your own representatives.

"Your president was shocked at that time to be told by Mr. Gilmore that a number of the club owners of the Federal
539 League had already agreed upon terms, by which they were to cease operating Federal League Clubs. This information was imparted, together with the stat-ment that the further continuation of the Federal League was impossible. We were told that this agreement, which was called tentative, had been reached some time before, that the Federal League was not to go on, that all would assist Baltimore to get what Baltimore wanted, but that Baltimore was not mentioned in the so-called tentative agreement, for the clearly expressed reason that no one felt he had any authority to act for this Club. No satisfactory explanation was given of the failure to keep Baltimore informed and to invite her participation.

"Of course, after a sufficient number of club owners had quit, the League was no longer a competitor of organized Ball and there was little or no inducement to organized Ball representatives to make concessions. Vigorous protest was made by your representatives on this account, but the claim being made that everything was tentative, we offered to go into conference de novo and accept or reject any settlement offered,—any settlement made to be for benefit of all the Clubs equally, or in proportion to their investment. This proposal was not accepted, being principally objected to by Mr. Sinclair.

"Later, on the same day, upon invitation, your President and counsel attended a joint meeting of the National Commission and Club owners of the National and American Leagues, and urged the claims of Baltimore to a franchise in a major league in competition with cities of equal importance as a necessary condition in any readjustment. After a courteous discussion this proposal was unanimously rejected and the meeting adjourned. Mr. Herrmann, Chairman of the National Commission, stated at the time that the agreement was supposed to be a settlement and that the Baltimore Federal League owners would receive fair treatment, to be arranged
540 later, but he did not disclose what he considered fair treatment.

"The next meeting was held in Cincinnati on Dec. 21st, 1915, but Baltimore was not invited to be present. We received, however, a telephone message from Mr. Gilmore, stating that he thought he could get for us $50,000 in cash if we would assign the grounds, (which cost us nearly twice that much), we to retain the responsibility of the team. With the League gone the team could, of course, be only a liability, and this very insufficient offer was rejected.

"In December, 1915, your president received a letter from Mr. Gilmore stating that the Peace Agreement had been signed, the effect of this was to finally destroy the Federal League. He informed us further that the Baltimore Settlement was left to a committee, consisting of seven persons, the three members of the National Commission, the President of the International League, Gilmore, Robertson (of Buffalo) and a representative of the Baltimore Club,—the Balti-

more Owners to agree in advance to be bound by the decision of a majority of the Committee.

"This naive suggestion has, of course, not been accepted.

"Counsel for the Club attended in Cincinnati on January 5th, 1916, when the Committee was scheduled to meet, but declined to serve when he ascertained the terms of the organization of the Committee. The Committee thereupon adjourned, and has never met so far as we are informed.

"In the meantime, though a peace pact or agreement eliminating the Federal League, has been signed by the remaining members of the League, some of whom have received or are to receive large money payments reported in one instance to be as high as $400,000, others to receive financial assistance in the purchase on favorable terms of Major League franchises, no actual offer of any sort whatsoever, has ever been made to this Club, either to compensate it for the destruction of its business by the elimination of its associates in the
541 Federal League, or to furnish it facilities for making use of its assets, fit only for conducting a Ball Club, and all efforts to bring about such offer have been futile.

"The investment which your corporation has made in its business including operating loss during the two formative years, and bonuses and advance salaries paid to players is $240,000.00, approximately.

"In the opinion of your management there should be an immediate sale of your grounds, constructed at a cost of nearly $100,000 and your team should be directed to seek employment elsewhere, thus relieving the corporation of this liability, or at least materially reducing it.

"We are advised by counsel that there are remedies provided by law for the damage your corporation has suffered.

"There is now pending in the United States District Court for the Northern District of Illinois a suit brought by the Federal League, and by its constituent clubs, against the group known as Organized Base Ball, seeking to enjoin the carrying on of its business, in violation of the Federal Anti Trust Statutes. This corporation is a party to that suit, and in a position to continue it to a conclusion.

"Also this corporation may recover from those who have assisted in extending the monopoly of Organized Base Ball, through the destruction of the Federal League, and the elimination of its competition, three times the damage thereby suffered by it as provided by the Clayton Anti Trust Act. This damage includes the destruction of franchise value, the loss, if any, on a sale of the grounds and the conversion of the team from an asset to a liability. It also includes the loss of prospective business profits.

"The corporation has also the right to an accounting of the benefits of the settlement obtained by our former associates and the right to share equally therein when established.

542 "We recommend that the suit pending in Illinois be pushed, and that a new proceeding be instituted at once to recover triple damages under the Clayton Act.

"For the purpose of pushing these proceedings the Board should

be authorized to raise as much as $50,000, in such manner as the Board shall determine.

"The Board should also have power to settle or compose any suit that may be instituted, if favorable terms shall be received. It is, of course, a source of great regret to your management that the affairs of the Club are in the position indicated in the above statement.

"It is even more to be regretted that through defections in the ranks of Federal League officers and owners, brought about by the efforts of the representatives of Organized Base Ball and without fault of your management or of the citizens of Baltimore, the opportunity to establish permanently, in this city a ball team, giving exhibitions of the highest calibre in competition with teams from other cities of equal importance, is apparently lost for the present.

"Your management is of the opinion, therefore, that the only course to pursue is to press with energy the rights of this corporation, in the Courts, if necessary, believing that a tame acquiescence in the high handed and wrongful acts of those who have destroyed your property would be of no advantage, and would do little credit to your business foresight or courage.

"Respectfully,

"C. W. RASIN,
*"President."*

Witness further testified that the last meeting of either the board of directors or the stockholders of the plaintiff club, held prior to the meeting of January 27, 1916, was the meeting on No-
543 vember 23, 1916; that there were about fifteen directors of the plaintiff club and about six or seven hundred stockholders; that of the directors of the plaintiff club Messrs. Hanlon, Harry Goldman, Rasin and witness were in New York on December 17, 1915, and for a little while during the afternoon, Mr. Schleunes and Mr. Busick, but only witness, Hanlon and Rasin were present in Gilmore's room at the conference in the morning of the Federal League and that only witness and Rasin were at the meeting at the Waldorf in the evening; that witness never consented on the part of the plaintiff club to the making or consummation of the agreement referred to by Mr. Gilmore, which was discussed at the meeting at the Waldorf, nor did the plaintiff ever consent to the destruction of the Federal League as a going concern, it had no opportunity to do so even; nor did the plaintiff club ever consent to or ratify the execution of that agreement.

Witness then identified letter dated October 22, 1915, addressed to C. W. Rasin and signed J. A. Gilmore, stating the same was received by Mr. Rasin; and said letter was offered in evidence as a part of the deposition of witness, being in the words and figures following:

"DEAR SIR:

"You are hereby notified that a meeting of the Board of Managers of the Federal League of Professional Base Ball Clubs will be held in the city of Indianapolis, and State of Indiana, at the hour of 1 P. M.

on Tuesday, the 9th day of November, 1915, at the offices of Myers & Gates, Attorneys at Law, Fletcher American National Bank Building in said city.

"The purposes for which the meeting is called are:

"(1) For the purpose of organization and election of officers;

"(2) To consider the default, failure, refusal and neglect of the Federal Base Ball Club of Kansas City to keep the obligations
544 assumed by it under its license or franchise contract;

"(3) To consider the default, failure refusal and neglect of the Buffalo Federal League Base Ball Club to keep the obligations assumed by it under its license or franchise contract;

"(4) For the transaction of such other business as may properly come before said meeting.

"Yours very truly,
"FEDERAL LEAGUE OF PROFESSIONAL BASE BALL CLUBS,
(Signed) "J. A. GILMORE,
*President.*

(Signed) THOS. W. GILMAN,
*"Secretary."*

Witness identified letter dated November 1, 1915, addressed to Harry Goldman, secretary of the plaintiff club, and signed J. A. G., stating it was received by Mr. Goldman and handed to witness; and the same was offered in evidence as a part of deposition of witness, being in the words and figures following:

"DEAR SIR:

"I have written several letters to Mr. Rasin requesting him to be sure and bring to the annual meeting next Tuesday a complete statement showing cost of operation in the various departments of your ball club during the season of 1915, and am now writing you in reference to this matter so if the statement is not already made that you will see that it is made up and handed to Mr. Rasin, who represents your club as a member of the Board of Managers.

"I also want to suggest that in view of your experience the last year that you make out a statement of the approximate cost to operate your club during the next season. In other words, I would like an idea of how much cheaper you think you can operate in 1916 than you could in 1915. This will be valuable information for our Board Members, and I want you to get it as accurately as pos-
545 sible.

"Yours very truly."

Witness identified a letter dated November 30, 1915, addressed to Col. James Gilmore, signed by Hugh Gilmore, stating he did
546 not know the signature of Hugh Gilmore but that the notation at the bottom of the letter was in the handwriting of James A. Gilmore, and it was handed to witness by Rasin; said let-

ter being offered in evidence as a part of deposition of witness, being in the words and figures following:

"DEAR SIR:

"I trust this communication will reach you. I notice by the evening papers you will raid the Coast for your new Federal Team in New York City. Permit me to point out to you a 'star' who resides here. I refer to Claude Wyckoff of South Williamsport, Pa. Mr. Wyckoff is a natural-born hitter; bats left-handed; fast on his feet; a sure catch and is a 'find'. I have recommended him to Hughie Jennings also to Manager McGraw, also Connie Mack, but the man who acts quickly will get him. I saw him in one game throw two men out at 1st on sure base hits to right field. This is the classy ball this man put up this last summer. He played in amateur ball—but very fast—this past season on the South Williamsport nine. I was official scorer and every Saturday afternoon watched his course. He plays rightfield. We have another star in Dave Wyckoff, a brother of Weldon Wyckoff, who is Connie Mack's find on his pitching staff. Dave is no relation to Claude but is a find at short-stop. Believe me, these two Wyckoff boys will surprise you as to their class. I want you to demonstrate that you can pick up 'finds' too. My name is similar to yours and I wish to congratulate you on your efforts and wish you success.

"Kindly command me if I can be of any service to you. I know both these men personally but they are not aware that I am writing you a letter of recommendation in their respective behalf.

"Yours respectfully,

(Signed) "HUGH GILMORE."

(Notation on bottom of letter, in ink, is as follows: DEAR CARROLL: Better investigate. J. A. G.")

547 Witness identified a letter dated December 2, 1915, signed J. A. G. and addressed to Carroll Rasin, stating it was received by Rasin and handed to witness; and the same was offered in evidence as a part of deposition of witness, being in the words and figures following:

"MY DEAR CARROLL:

"I am enclosing herewith papers which were served on me this day in reference to Bender's suit.

"Do you not think it advisable that we place same in the hands of your club's attorneys? I really do not think that the league should stand any of the expenses of this litigation, however, it must be taken care of and I would appreciate it very much if you would arrange with your attorneys for the handling of this matter and try to come to some understanding as to the fee that will be charged as I do not want the League to pay the enormous legal fees that we have been compelled to pay in the past. You will note that the answer is to be filed within twenty days.

"Please acknowledge receipt of these papers and advise me what action you have taken.

"With kindest personal regards, I remain,

"Yours very truly,

(Signed) "J. A. G.,
*"Pres."*

Witness identified a letter dated December 3, 1915, addressed to Carroll Rasin and signed J. A. G., stating it was received by Rasin and handed to witness; and the same was offered in evidence as a part of deposition of witness being in the words and figures following:

"DEAR SIR:

"Several times recently I have written you to send me a copy of your operating expenses in the various departments. This can be very easily taken off the books which were sent your club last spring.

548 "I have received reports from the other clubs and am awaiting yours before a comparison can be made."

Witness identified a letter dated December 4th, 1915, addressed to James A. Gilmore, stating it was a copy of a letter Rasin wrote to Gilmore and which witness received from Rasin; and the same was offered in evidence as a part of the deposition of witness, being in the words and figures following:

"DEAR SIR:

"In answer to your favor of the 2nd inst. in reference to Bender suit, would say that we have turned over to our attorneys, Messrs. Janney and Goldman for their attention."

Witness identified another letter dated December 4, 1915, addressed to James A. Gilmore, stating it was a copy of a letter written by Rasin to Gilmore and handed to witness; and the same was offered in evidence as part of deposition of witness, being in the words and figures following:

"DEAR SIR:

"Replying to yours of the 3rd requesting copy of our operating expenses of the various departments for the past year, beg to hand you same herewith enclosed."

Witness identified two letters dated December 6, 1915, addressed to Carroll Rasin, signed J. A. G., stating the same were received by Rasin and handed to witness; and said letters were offered in evidence as part of deposition of witness, being in the words and figures following:

"DEAR SIR:

"It looks very much as though I will have to call a meeting for the latter part of this week and wish you to hold yourself in readiness to attend the same. If called it will be held in New York City.

549 "There are several very important matters which the Board of Managers must decide and take action upon at once. I will telegraph you Thursday."

"DEAR SIR:

"Wish to acknowledge yours of the 4th. Thank you very much for taking care of the note. As soon as the Secretary returns, if you desire it, I will have a note sent you for the amount of our obligations to your club.

"I also note that you have turned over the papers in reference to Bender's suit to Messrs. Janney and Goldman. Please see that this matter is given attention."

Witness further testified that no officer or person was authorized at any meeting of directors, stockholders or executive committee of the plaintiff club to enter into negotiations to wind up either the plaintiff club or the Federal League.

On cross-examination witness testified that the plaintiff club was incorporated in the fall of 1913 and witness was consulted in regard thereto and was one of its attorneys; that he recalls the suit which was brought in the Federal Court at Chicago between the Federal League and its constituent members against the National and American Leagues and its constituent members; that the plaintiff club was one of the plaintiffs in that action; at that time witness represented the plaintiff club; but that he was not consulted and was not of counsel in the Federal League suit in Chicago; that Mr. Gaites and Mr. Addington were the attorneys for the Federal League and the plaintiff club in the Chicago suit; that he does not think Gilmore had charge of the Chicago suit but that as President of the Federal League he certainly had a considerable measure of control over its participation in the litigation. That witness was elected director of the plaintiff club at its organization meeting and has continued as a director ever since; that witness went to New York on

550 the night of December 16, 1915, at the direction of Mr. Rasin, President of the plaintiff club, and witness was at the time its attorney; that when witness arrived at the meeting at the Waldorf on the night of December 17, 1915, Mr. Rasin told witness that, "things were in good shape to get a major league franchise for Baltimore if I would get up there and ask for it, and I got up there and asked for it." That witness was largely influenced in going into this baseball matter originally by his desire to have Baltimore represented by a team which would place it in competition, with cities of its own size and importance, in baseball; witness is very fond of the sport himself, too. That the desirability of what is

generally known as a major league franchise for Baltimore city was a public question and that witness on one previous occasion had been engaged in an endeavor to get major league base ball in Baltimore but without success. Now that the Federal League had been disrupted, the plaintiff club would not be and was not in a position to actually take up such a proposition—that it would be necessary to get new money for it; that witness did not have anything definite in his mind at that time further than the assurance of a number of people that any major league proposition that could be brought to Baltimore could be financed. Witness had nothing definite other than that in mind at the time he made the statement—Mr. Hanlon always stated that he would put in considerable money; that witness did have in mind that any such baseball enterprise that came here would naturally be offered to the stockholders of the plaintiff club that he represented, in some way that would be made as agreeable to them as possible; that they would—although this was in witness' mind only—make use of plaintiff's grounds which would be of advantage to the Baltimore Club and that he certainly expected to give the stockholders of said plaintiff club, who had sent witness over to New York, an opportunity to take an interest in anything witness did over there. That witness went to New York and
551 was at the meeting there in a dual capacity, you might say,—they were all Baltimoreans and they were the owners and directors of the plaintiff club; that there were several things that the plaintiff club would not be able to handle as such—but its owners would be able to come in on the most agreeable possible terms and witness had no doubt such an arrangement would be made. Asked if he and Mr. Rasin were not in New York representing the plaintiff club as president and attorney respectively, witness answered, "Yes, in a sense he was acting as president and I as attorney for it, and it certainly was my duty to get the very best results I could get out of this situation that had developed in New York. Of course, I had had no antecedent authority for this beyond the President asking me to go over there, and anything that I did there, of course, was subject to their approval." That witness does not remember that Mr. Sinclair and Mr. Gilmore stated at the meeting at the Waldorf that the committee representing the Federal League itself and the constituent clubs were there with authority and acting for them; that he read over the stenographic minutes of the proceedings of said meeting about six or eight months ago, and had not seen them since; that he remembers someone stating there was a gentlemen present from Baltimore who would like to speak on behalf of Baltimore and then Mr. Herrmann called upon witness to speak, which he did; that he told them he wanted the opportunity to buy a major league franchise or to get one in some way or other out of this—or, "what I wanted was that Baltimore should be considered in the new arrangement of clubs that was going to follow this settlement which I had not read at that time however." Witness did not make a definite offer to that end in the sense that it was subject to being accepted in that way. Asked if he did not state at the meeting that he was prepared to pay $250,000 for a

franchise, witness answered, "I said that Baltimore would raise that amount. Of course, the Baltimore Federal League Club did
552 not have that money and was not in a position to do it, but I knew the city and the people of Baltimore well enough to know that I could raise that money." Asked if his proposition had been accepted if that would not have ended all the difficulties, witness answered, "In my own opinion it would have worked out satisfactorily in the end. That was my opinion at that time." That the franchise witness had in mind of acquiring then was the St. Louis franchise in Organized base ball. Again asked if his offer had been accepted with respect to acquiring the St. Louis franchise for $250,000, if there would have been any complaint on the part of the plaintiff club, witness answered, "I would imagine—although this is only my opinion—that out of the organization of a new club, so much of the loss of the Federal League club caused by the absorption of that league would have been made good, that the stockholders of the club would have been satisfied and I hoped, indeed, that they would be satisfied. I did not know"—that was his thought, however, in making the offer. That after the meeting of December 17, witness continued to represent the plaintiff club in telephonic and telegraphic communications with Gilmore, and also when he went to Indianapolis; that he did not go to the Cincinnati meeting that was held in December; that there were two occasions on which the witness went to Indianapolis, but on neither occasion did he attend any meeting; that one occasion was prior to December 15.

Q. I am talking of the meeting in Cincinnati, after December 17, 1915, the first meeting after that date. You recall, do you not, at the meeting at the Waldorf in December, 1915, that Mr. Gilmore appointed a committee of the Federal League to take up these questions, and that they subsequently met in Cincinnati. A. I was not present at that meeting.

Q. But you recall the fact that there was a committee appointed for that purpose. A. Yes, I recall that there was a committee appointed by Mr. Gilmore.

The witness further testified that he thinks Mr. Rasin was
553 not on that committee; that Mr. Rasin did not attend the meeting of the committee at Cincinnati; that during the course of that Cincinnati meeting Mr. Gilmore, in Cincinnati, called up the office of the plaintiff club in Baltimore and witness then had a conversation with Mr. Gilmore over the telephone; that Mr. Gilmore did not offer him $50,000 but said he "could arrange out there with the National Commission to get us $50,000;" that witness thinks Gilmore, Weeghman and Sinclair were all on that committee; that Mr. Gilmore said that if they would be satisfied with $50,000 and keep the players and the grounds he thought he could put that deal through.

Q. And then you made a counter-proposition to him that if he would raise it to $75,000 and relieve you of the liability of the players, and take over the lease of the grounds, that you could put that through, didn't you? A. I said I thought that could be effected.

Q. So that the only difference between you and Mr. Gilmore was the $25,000 money difference and the question of the liability for the players and for the lease of the grounds? A. No, there was a great deal of difference between me and Mr. Gilmore in addition to that.

Q. Aren't those the three points that you mentioned in your testimony given at the last hearing? A. The terms you mentioned are terms that I stated to Mr. Gilmore that I would recommend the acceptance of here, but they were far from being what I thought was right.

Q. Still, if Mr. Gilmore had raised his offer to $75,000 and taken over the players and the grounds, you would have put that through, wouldn't you? A. I would have recommended it at the time.

554 Q. And you believed that it would go through? A. Well I would not recommend anything that I did not think the stockholders would accept.

Q. And Mr. Rasin was with you at the time? A. He was in the room.

Q. He heard you make that proposition? A. Yes.

Q. And he was agreed to that? A. He was willing to abide by my judgment on that.

Q. So that when he heard you make the proposition of paying you $75,000 and they to take over the players and the grounds, he was agreed with you in that? A. He submitted his judgment to mine in that respect, as that was a matter of litigation and settlement.

Q. And then Gilmore called you on the phone again and told you that he could not give you $75,000 and take over the players and grounds? A. Yes.

Q. And that you had better accept his proposition? A. Yes.

Q. And you did not accept it? A. I told him we would not settle on such a basis.

Q. Then there was a conference in Cincinnati on January 5, 1916. Did you attend that conference? A. I think the letters are already in the record in pursuance of which I went to Cincinnati. I had no conference with the National Commission at that time. I had a conference with Mr. Gilmore and Mr. Robertson, of Buffalo, and I declined, at that time, to go into a committee meeting for the adjustment of the Baltimore matter on the basis that the ad-

555 justment of the committee would be final.

Q. You were there in your official capacity as attorney for the club? A. Oh, yes, I think so. I certainly intended to represent the Club there.

Witness further testified that shortly after his arrival at the meeting at the Waldorf on the evening of December 17th the meeting was called to order by Mr. Herrmann, who assumed the chair and that they had a stenographer there who made a stenographic report of all that was said; that he has since read the stenographic record which the thinks is substantially correct; some things took place which witness did not see in the record; recalls that in the beginning of witness' talk when he referred to whether they were going to make

peace in base ball, Mr. Herrmann or someone said, "Going to make peace? Peace is already made. It is done," and witness did not see that remark in the stenographic report, but recalls that remark very distinctly, so he would not say for sure that everything in there is in accordance with its actual happening; that his own remarks in the report are substantially as he made them; that witness continued thereafter to represent the plaintiff club in the suit brought in the United States Court in Philadelphia against the National and American Leagues and Gilmore, Sinclair, Weeghman, Tener, Johnson and Herrmann; that he drew the complaint in that case which follows very closely, in part, the complaint in Chicago, and that witness is mainly responsible for the remaining allegations therein;
556 that witness was familiar with the allegations filed in the Philadelphia suit and participated in and took charge of the trial thereof; that he had assisting him Mr. Chester Farr. The case took about a week to try; that Judge Dickinson presided and witness made a motion that the Court should dismiss the case, which he allowed; that this took place in the morning about ten o'clock; that the afternoon before the defendants offered in evidence the stenographic notes of the meeting at the Waldorf and witness requested an opportunity to examine them and took them away for that purpose, and the next morning he called on Mr. Pepper and Mr. Pritchard before Court convened at ten o'clock and had Mr. Farr with him at the time. Witness was then asked the following question and gave the following answer: "Q. Do you recall making this statement to Mr. Pepper and Mr. Pritchard, when Mr. Farr was present, 'That, in view of the stenographic report, it could no longer be fairly contended that the major leagues had conspired against Baltimore, and that under the circumstances you could not honorably proceed with the case and had no alternative excepting to ask the Court to allow you to discontinue it,' or words to that effect? A. I do not recall using the word 'honorably,' and I think it is highly improbable that I did. I have no record precisely of what I said, but substantially I have no doubt that I made that remark." Witness further testified that after that conversation they went down to the Federal Court and upon the opening of Court he made a motion to be permitted to dismiss the case, which was granted.

On redirect examination witness further deposed that on the occasion of his going to New York on December 17th neither the plaintiff club, its stockholders nor directors had any knowledge
557 of what was to arise there, nor did witness—the President of the club was there and invited witness to talk; that he feels very confident that Mr. Rasin did not know what was going to happen before going to New York or any of the other directors who were there on that occasion; that he does not think he made any statement at the meeting to the effect that he was there representing the plaintiff club; that the proposition made by witness at the meeting to pay $250,000 for a franchise in Organized Baseball had never been considered at any meeting of the executive committee, board of directors or stockholders of the plaintiff club—they had never heard of such a thing; that he was not conveying any proposition

at that meeting as coming from the plaintiff club but was simply telling them there what witness could do in Baltimore towards establishing a major league club under proper circumstances and auspices; that what he meant by stating that if his offer had been accepted no suit would be brought by the plaintiff club was that in his opinion the stockholders could have been provided for sufficiently in the organization of the corporation to take over this major league franchise that they would have accepted it—it was merely a question of witness' own judgment as he had never consulted them. Q. "You did not make that statement from any prior conversations or from any authority which you had received prior to that time either from the stockholders or from the corporation itself in Baltimore, is that correct? A. That is true." Asked what authority he had from the plaintiff club to make any proposition at all either to settle for $75,000 or otherwise, witness answered, "None whatever;" that it was his custom in his dealings to make up his mind as to what probably would be accepted or what witness ought to recommend for acceptance and to recommend it, and that means it will go through in the judgment of witness—and it generally does.

558 Asked whether down to the meeting of January 27, 1916, any of these matters or any matter relating to the dismantling of the Federal League and its constituent clubs, or any matter with relation to their ceasing to do business and to operate as they had theretofore, there was discussion in any meeting of any character, either of the executive committee the directors or the stockholders of the plaintiff corporation? The witness answered: "My recollection is that there was not." That witness was then asked the following question and gave the following answer: "Q. Major Janney, you were asked if you had made a statement in Philadelphia to Messrs. Pepper and Pritchard substantially to the effect that after reading the minutes of the meeting held at the Waldorf-Astoria on the night of December 17, 1915, you did not see how the plaintiff in that case, that is in the Philadelphia case, could charge that there had been any illegal conspiracy between or among the defendants to that suit. Now, I want to ask you what was the ground, at that time for your statement, and whether or not, since the making of the statement you have changed your views with regard to the matter? A. The statement was an obvious error. Nothing that transpired at the meeting could affect the question of the conspiracy. The matter that, in reality—although I did not, perhaps, have it clearly in mind and, therefore, did not, perhaps, clearly express it to Messrs. Pritchard and Pepper—influenced me was doubtless the fact that the defense was based upon circumstances in which I personally had taken part, and, therefore, it was impossible to try the suit as counsel. I might say, in explanation, that I had always intended that Mr. Glasgow should try the case on account of the possibility of being personally very close to the Baltimore Corporation, but

559 he found it impossible to do so at the last moment, and rather than postpone it, I did undertake its trial. When it had developed that the defense was very largely based upon matters in which I had had a personal part, it was obvious that the case should

better be tried by some one other than myself. And, on further reflection, I appreciated the fact that I had been in error in stating that the question of the conspiracy had been eliminated by the occurrences at the meeting. I was quite aware of the fact that personally I and all the other members of the Baltimore Club had been opposed on principle to the settlement that had been made, and obviously the club had not gotten anything out of it except to lose everything it had. Being convinced that I had been in error, I went to see Mr. Pepper and Mr. Pritchard. I did not see Mr. Pepper because he was out of the city, but I saw Mr. Pritchard and explained to him my attitude and told him I would advise the club to employ other counsel for the purpose of bringing the suit, and then did so and retired from the case." Witness further testified on redirect examination:

Q. There is one other question I would like to ask with regard to these minutes which you read in Philadelphia and which you said you had read some months ago. Do you recall that during the course of the meeting, as recorded in the minutes, that when the Chicago suit was being discussed at the meeting, just prior to your coming in, that it was stated that the counsel for the Federal League would attend the meeting in a few moments, or that the Federal League had sent for its counsel, and I think just before you came in or just afterwards, you were referred to as being the counsel for the Federal League in that suit. Do you recall those statements in the minutes? A. I remember there were some such statements in the minutes, but I had never heard it before, because, as the record shows, I was not there at the time and no such thing occurred in my presence as I recall.

Q. Were you counsel for the Federal League in Chicago? A. I was not. I had never acted for the Federal League in that
560 or in any other suit.

Q. Or in any other matter? A. Or in any other matter that I recall.

On re-cross examination witness testified that Mr. Chester A. Fari who was associated with him in the trial of the Philadelphia suit, did considerable work in conducting the trial. Asked when he found there was some personal embarrassment in continuing in the case as counsel if there were not other counsel who could have gone
561 on with the trial at that time, witness answered, "I think it would have been very inconvenient and ill-advised to do so inasmuch as I had taken the leading part in carrying on the case up to that time. It would have been undesirable to retire in the middle of that case, undoubtedly." That when witness made a motion to dismiss the suit in Philadelphia he did not express to the Judge or anyone in the Court room that it was due to any personal embarrassment; that witness simply stated to the Judge, if he recalls correctly, that he wished to dismiss the suit, and that it had not been settled; witness is not particularly familiar with the practice in Philadelphia that perhaps it would have been possible to have had the case continued until another date and another counsel substituted if witness

had made known to the Court his personal embarrassment in the further conduct thereof, but witness preferred to dismiss it.

Witness further testified on re-cross examination that while he was in the meeting at the Waldorf the question arose as to the best way to handle the Chicago case and that witness' advice was asked with reference thereto by several of the members of the Federal League who were there; witness was not going to allow that suit to be dismissed so far as the Baltimore Club was concerned until a satisfactory settlement of its claims was made; that a month or two thereafter witness agreed that the Chicago suit might be dismissed without prejudice to the rights of the Baltimore club, but he had had an opportunity then to carefully examine that suit which he had not had up to the time of the New York meeting. When witness came to examine that complaint carefully he found it was for an injunction, and as an injunction would not be effective for an event already transpired, and as what the Baltimore Club sought were damages, witness as-
562 sented to the dismissal of that suit without prejudice, so that a new suit at law might be brought for damages. Counsel for plaintiff then asked if the Court would take judicial cognizance of the Maryland Statutes without their being formally introduced in evidence, and the Court replied that it understood the Court did that.

The plaintiff further to maintain the issues on its part joined called as witness in its behalf ROBERT C. MORROW, who being first duly sworn testified on direct examination as follows:

That he is on the staff of Haskins & Sells, certified public accountants, and examined the books of the plaintiff Club in the Spring of 1917; that the season of 1914 showed a loss of $35,103.56, and a further accumulated deficit January 31, 1916, of $64,343.22, which would seem to cover the season of 1915; that the bonuses paid to players during the two years of operations amounted to $18,250; that the amount due under contracts for future services of players was $29,102.36; that on April 30, 1917, there was due on open account, and not evidenced by notes, $5,803.60. There is a slight variation January 31st, 1916, of about $12.00. There was due on notes April 30, 1916, $42,302.16; on January 31st, 1916, $57,627.16. The outstanding common stock was $175,000, and the preferred stock $164,400; that the $175,000 of common stock was issued for franchise and services, and approximately $161,000 of preferred stock was sold for cash, about $3,500 of preferred stock being issued to certain contractors for services—architects, etc. The buildings cost $56,102.85; improvements to grounds $13,465.80; furniture and fixtures, $13,080.81, making a total of $82,649.46.

563 On cross-examination the witness testified that it does not appear from the statement of accounts to whom the common stock was issued for the club franchise from the Federal League of Indiana; that the only comment is: "To amt. capital stock issued at par in payment of the franchise" and "To amt. capital stock issued at par in connection with services in underwriting 2,500 shares of preferred stock." The figure given as the sum due players was more or less of a liability on contracts for the seasons of 1916 and 1917.

The accounts show, so far as the fact has been ascertained, the extent to which liability was reduced by players subsequently going into other employments and receiving compensation therefrom up to the date of the statement. Does not consider any set-offs in this regard since the Spring of 1917. There is only one contract for season of 1917, the other contracts seem to be for the season of 1916 alone. A notation on the account states that at a date not shown the contract of Benny Myers running to the end of 1916 was assigned to Buffalo in 1915, Baltimore remaining liable in the event assignee failed to perform, and Buffalo failed to carry out its contract for 1916. Understands from notation that contracts for three players were assigned to an officer of the club in order that he might dispose of them for his own account. Thereupon the witness stated in detail the salaries of the different players during 1915, which total $71,369.72.

Account of player who left Baltimore Club or was dismissed during season would be reflected in the books so as to show how much the club actually paid to him. These are the odd amounts detailed in the account. Will not say that the total of $71,369.72 was actually paid, but it was chargeable against the operations of the club for that period. There may be some unpaid balances. Account
564 showing salary list for 1914 was involved in a previous examination.

Thereupon counsel for the plaintiff read the following stipulation:

It is stipulated by and between counsel for the respective parties as follows:

The disposition made of the clubs and plants in the Federal League of Professional Base Ball Clubs, in pursuance of the terms of the so-called 'Peace Agreement of December 22, 1915', is as follows:

(1) Chicago.—The owners of the Chicago Federal League base ball club were paid the sum of $50,000 as a contribution toward the purchase of the franchise and assets of the Chicago League ball club, the National League club of Chicago; the two teams were merged under one control and for the season of 1916 and since then the said Chicago League ball club has occupied and used the plant, grounds and base ball field formerly used by the Federal League in Chicago; and the Chicago Federal League baseball club and Charles H. Weeghman, formerly the President of the Chicago Federal League baseball club, became the owner and president of the National League club, the Chicago League ball club.

(2) Pittsburgh.—The Exposition Park Association, Incorporated, which operated the Federal League club in Pittsburgh did not build any grounds or improvements, but occupied and rented a baseball park from the Baltimore & Ohio Railroad Company. Since the making of the agreement of December 22, 1915, this baseball park and improvements thereon, have not been used regularly by any professional baseball clubs nor by any club operating under the Na-
565 tional Agreement or within organized baseball. The sum of $50,000 has been paid to the Exposition Park Association, Inc., $25,000 from the American League of Professional Base Ball clubs and its constituent members, $25,000 from the National League of Professional Base Ball Clubs and its constituent members.

(3) Brooklyn.—The Federal League Base Ball Club of Brooklyn, Inc., or Robert B. Ward and George S. Ward, the owners thereof, leased the unimproved baseball field in the city of Brooklyn, known as Washington Park, for the term of five years beginning in 1914 and ending in 1919, at a rental for the last three years thereof of $18,000 a year. Upon the said park they erected a stadium of concrete, brick and steel, and on the field played the games during the Federal League operation. Since 1915, no professional baseball games have been played on this ball field and no baseball club in organized baseball or operating under the National Agreement has occupied or used the ball park and its improvements. Under the terms of the Peace Agreement and in pursuance thereof the lease of the said park was assigned to the National League and the American League or their designated assignee. The said National League and American League assumed to pay the rental of $18,000 for the year ending in 1919, and the said National League and American League discussed the dismantling and tearing down of the improvements erected on said Washington Park, and each of said leagues has issued to George S. Ward and Robert B. Ward, or their representatives, twenty promissory notes, each in the amount of $10,000, payable over a period of twenty years, without interest, or an aggregate sum of $400,000. That the National and American Leagues subsequently sold and assigned their lease to the Brooklyn Federal League Park to
566 a storage company for the consideration of $10,000 and the storage company assumed to pay and has since paid the rental of the land of $18,000 a year.

(4) St. Louis.—In pursuance of the terms of the Peace Agreement of December 22, 1915, the St. Louis Federal League Base Ball Company purchased the franchise and assets of the said St. Louis American Base Ball Company. The baseball grounds and improvements formerly occupied and used during the existence of the Federal League by the St. Louis Federal League Base Ball Company have been abandoned and the present owners of the St. Louis American League Base Ball Company and the franchise in the American League in that City occupy and use the grounds and improvements formerly used by the prior owners of the St. Louis American League Base Ball Company.

(5) Newark.—Harry F. Sinclair was the owner of The Federal Base Ball Club of Newark, Inc. He personally purchased the baseball field and erected the improvements thereon which were occupied and used during the season of 1915 by the said Federal Base Ball Club of Newark, Inc., as one of the constituent clubs of the Federal League. Since the making of the Peace Agreement of December 22, 1915, the said baseball field so purchased and upon which such improvements were erected has not been used for the regular playing of the professional baseball games, although it has been rented and used from time to time for the playing of exhibition games of baseball by amateur clubs and by clubs operating under

the National Agreement, and for other sporting events. Under the terms of the said Peace Agreement the National League and the American League undertook to pay to the owner of the said
567 ball field and improvements an annual rental of $10,000 per year for a period of ten years, and the taxes, insurance, watchman's cost and upkeep of the said improvements with an option to the said National League and American League to purchase the said grounds and improvements within two years of the making of the said Peace Agreement at and for the sum of $200,000. The option to purchase has not been exercised. There has been paid to the said owner of the baseball field and improvements in accordance with the terms of the said agreement the sum of $—.

At the call of counsel for the plaintiff, defendants submitted lists of the sales of Federal League players and the amounts paid by the National and American Leagues, which lists were offered and received in evidence on behalf of plaintiff and are in words and figures following:

April 2, 1919.

*Statement of Amounts Paid (As Near as They Can be Ascertained) by National League Clubs for the Release of Federal League Players.*

| | | |
|---|---|---|
| By New York: | Bennie Kauff of Brooklyn | $30,000 |
| | Fred Anderson of Buffalo | 12,500 |
| | Wm. Rariden of Newark | 10,000 |
| | Edd. Rousch of Newark | 6,000 |
| By Pittsburgh: | A. Wilson of Chicago | 6,000 |
| | Harry Moran of Newark | 1,000 |
| By Brooklyn: | D. Hickman, from H. Goldman | 1,250 |
| By Boston: | Allen, Knetzer and Konetchy of Pittsburgh | 13,000 |
| By Cincinnatti: | Lounden of Buffalo | 1,400 |
| | Schultz of Buffalo | 5,000 |
| | Huhn of Newark | 2,500 |
| | Total | $88,650 |

568 *Purchases by Clubs of American League from Federal League Players.*

| | | |
|---|---|---|
| New York: | Lee Magee | $22,000 |
| | Pitcher Cullop | 7,500 |
| | 2nd Baseman Giddeon | 7,500 |
| Detroit: | Pitcher Erickson | 3,500 |
| | | $40,500 |

569 Thereupon it was announced that the plaintiff rested.

The defendants thereupon called as a witness in their behalf JAMES A. GILMORE, who being first duly sworn testified on direct examination as follows:

That he resides at 12 West 44th Street, New York City, and is engaged in business in said city, that he has attended this trial to testify at the request of counsel for defendants, and that he is one of the defendants; that he was President of the Federal League during the seasons of 1914 and 1915, and signed the peace agreement of December 22, 1915. At the beginning of 1915 season Kansas City, Chicago, Newark, Pittsburgh, Brooklyn, Baltimore, St. Louis and Buffalo were the constituent clubs of the Federal League. The Federal League was an Indiana corporation, capitalized at $8,000, consisting of 80 shares, and whenever a franchise was issued ten shares were issued to an individual member who was then automatically made a member of the Board of Managers of the Federal League, and to whom they looked for representation from the individual units that were organized. The shares of stock were issued in the name of the individual representative of the club, and the certificate was later assigned back to the central organization along with the players' contracts and the leases. Is not positive whether plaintiff's certificate was reassigned in pledge to the central organization. Carroll Rasin, President of the Baltimore club, was its representative on the Board of Managers. The eight clubs enumerated engaged in the schedule for the entire season of 1915, and had also so engaged through the season of 1914, with the exception of Newark, which in 1915 purchased the franchise of the Indianpaolis club. After termination of 1914 season Harry Sinclair pur-
570 chased the Indianapolis club and moved it to Newark. Federal League obtained quite a few good players from Organized Baseball, and prospects were bright from financial standpoint and otherwise. Opening days at all the parks were exceptionally good, but at Newark it was wonderful,—the city of Newark gave a half holiday. There must have been 27,000 or 28,000 people in the park. Only other time during the remainder of the season that there was such a crowd was in Brooklyn.

Had many discussions on account of low attendance and could not decide whether it was due to lack of time or lack of money. Mr. Ward decided to test that out and Brooklyn had a free day and they were convinced that people had time but not the money to pay what was being charged. Then reduced schedule of prices and attendance increased two and a half times to three times, but returns were not increased materially.

It was then that all came to the conclusion that it was pretty nearly a hopeless task, and at various meetings following there were discussions about what would be done the following year. Is referring to about the middle of June and 1st of July, 1915. It may have been previous to that time that they began to discuss the possibilities of a six club circuit for the following year, because Kansas City and Buffalo had already showed signs of financial weakness and

one or two other club members were complaining about the terrible expense and lack of revenue. But everybody objected to a six club circuit. It is difficult to make schedule for six club circuit that would be economical. Eight clubs are more desirable. After several meetings it was concluded that there was not any chance,
571 and witness suggested to Ward and Sinclair that they try to put over one gigantic bluff and see if they could not get at least recognition for their ball players and possibly sell a few parks that cost a great deal of money. Witness refers to Mr. R. B. Ward, who was president of the Brooklyn club, and of the Ward Baking Company—a man of wonderful standing and whose integrity was unquestioned, and he was honorable to the extreme. He was also a director, witness thinks in a couple of New York banks. He died in the middle of October, 1915. Mr. Sinclair lived in New York and was president of the Sinclair Oil Company, and of the Sinclair Gulf Company, and a director in many banks. Witness suggested to R. B. Ward and Sinclair that they make a bluff about entering New York City, that Organized Baseball might come around and make a proposition, and they agreed to back him up. Accordingly rented a suite of five offices at 42 Broadway, New York, furnished them and took a two year lease. Newspapermen believed they were coming into New York City. Then engaged real estate man to get options on property at 143d street and Lenox Avenue. He worked on it secretly and the options were secured, and the streets were closed through Mr. Comstock. Then engaged Comstock to draw plans for wonderful stadium, and he prepared them for a stand to seat 55,000 people. Had photographs taken and published broadcast over the country. A painting was exhibited at 43d and Broadway, and the result was that everybody in the country thought they were really going to invade New York City. Witness lived at the Biltmore, and later there met three men of Organized Baseball, one of whom said they were to have a meeting on Monday, and wanted witness to "come around and take this matter up." Witness
572 replied, "Absolutely nothing doing. We have gone too far and made too much progress on our New York invasion, and I am not going to do anything about it." Witness reported the matter to Sinclair. The next day when Sinclair was in witness' office, received telephone call from one of the presidents of the clubs. This was on December 13, 1915. Prior to this date Buffalo and Kansas City had forfeited their franchises, although not publicly, because they could not pay their ball players, and witness personally borrowed $50,000 from Sinclair and Ward to pay the players for the full season, so as not to show any weakness at that time. There were six clubs in good standing. One of the presidents said over the phone that they were in a meeting and wanted witness to "come over and fix this thing up." Witness said: "I told you the other day I would not have anything to do with it, and I will not talk about it." He said: "Is Mr. Sinclair around?" I said, "Yes, he is right here." He said, "Will he come?" I said, "I don't know. I will have to ask him." So in a loud voice I said, "Here, Harry, these people want you to come over and talk to them. Do you want to go?" He put his mouth close to the telephone and said, "We might as well go and

hear what they have to say." And the result was that we went over to Governor Tener's office—he was president of the National League—about three o'clock that afternoon.

The witness further testified that they discussed the situation thoroughly and finally adjourned for dinner at the Republican Club.

573 There, in the evening, the discussion again took place, and they were convinced of Organized Baseball's sincerity to go through with the proposition, and drew up a tentative agreement and signed it at that time. The most serious problem was the Brooklyn club. They had made great expenditures there and lost more money than anybody else, and witness felt if Organized Baseball was willing to take care of that unit they would naturally take care of the others. It was finally agreed to pay $400,000 in $20,000 annual installments for the Brooklyn park. Speaking for themselves—the National League—"they were to pay $10,000, and they felt that the American League would pay an equal amount." Then discussed the Chicago situation where they had spent $300,000 in a ball park, and desired to protect Weeghman. Finally came to the point where Organized Baseball was willing to aid them in getting Chicago National League franchise and transferring it to Northside Park, and the National League was to pay $50,000 of the amount. Mr. Weeghman was to get the franchise which, before the beginning of the Federal League, was worth about a million and a quarter dollars. Weeghman was to get it for about $500,000, and in that way recoup the money he had lost in the Federal League. They had not built any park in Pittsburg although they lost a couple of hundred thousand dollars, and they finally decided they were willing to pay $50,000 on that. Then discussed the Baltimore situation, and witness asked for $200,000. This was laughed at. Later told Sinclair he had thought well to start high. Finally left that meeting with a tentative agreement covering Brooklyn, Chicago and Pittsburgh. Felt that the park at Baltimore should be taken care of by their obtaining International League franchise. Did not discuss Newark situation. The St.

574 Louis situation was discussed slightly, and Sinclair, who was very closely connected with Ball, said that Ball would be satisfied if he could buy a franchise in the American or National League in St. Louis. No representative of Baltimore was present at this conference. Prior to it, there had been no meeting of the Board of Managers of the Federal League in reference to the conference leading up to the tentative agreement. The tentative agreement was reduced to writing, and a duplicate original was signed by everyone. It was dated December 13, 1915.

The witness further testified that on the next or following day he wired all of the members of the Board of Managers to meet him at New York at the Biltmore on the 17th, and thinks he called a meeting for that date, stating that there were important developments. Is sure he wired Rasin to bring Hanlon. Hanlon was an old baseball man and witness thought he might aid them in the completion of the negotiations. Rasin, Janney and Hanlon re-

ported at the Biltmore Hotel on the morning of the 17th. Witness took Rasin aside and showed him a copy of the tentative agreement. Told him the Board of Managers would convene later in the day to discuss the proposition. Later Sinclair, Weeghman, Will Ward and Comstock reported. Comstock was vice-president of the Pittsburgh Club and was authorized by telephone to act for Mr. Gwinner, who was a member of the Board. Sinclair represented Newark, Kansas City and St. Louis. He and Mr. Ward having furnished the money for the Buffalo and Kansas City Clubs, their assets were turned over to them. Mr. Ball wired Mr. Sin-
575 clair to represent the St. Louis Club. Weeghman represented Chicago. All went into the room and had a lengthy discussion about this tentative agreement, and Baltimore wanted to know what had been done for them. On the occasion of witness' conversation with Rasin, earlier in the day, had told him; "You must realize that there is no possible chance to start next season, and the thing to do is for us to get all we can." We were desirous of having the players taken care of, to protect them and at the same time protect our own interests. The meeting was of the Board of Managers and was presided over by witness as chairman, according to custom. He made memoranda of the proceedings. Witness' brother, the regular secretary, was in Chicago, and did not attend. In his absence usually designated someone else as Secretary, as matter of form, but witness always made the pencil memoranda. The notes made by witness were sent to their attorney, who wrote them up in minute form. About one clause witness is not sure, and that is as to who he designated as secretary. Witness has positively clear recollection of everything that took place at the meeting. Baltimore was represented by Rasin, its president, and also by Hanlon and Janney. A few minor matters were taken care of, such as the resignation of George Ward and appointment of W. B. Ward as member of Board of Managers of Brooklyn Club. Then the meeting sanctioned the representation of the Kansas City and Buffalo clubs by W. B. Ward and Sinclair. Then had discussion relative to the tentative agreement. The Baltimore club seemed to feel they had not been taken care of, and Rasin suggested that a committee of three, consisting of witness, Sinclair and one other party selected by witness, attend the meeting of Organized Baseball and report back. Sinclair said he would not serve
576 unless the committee had positive authority to complete negotiations, and either accept or decline them, and he suggested that he be taken off of the committee and Rasin substituted. Then Rasin made motion that this committee consisting of witness, Sinclair and a third party to be selected by witness, go with full authority to accept or decline anything that was offered. The motion was put and carried. Witness then selected Weeghman as the third member, and then witness invited Rasin to go with them. This was late in the afternoon. Thinks Rasin and Janney then went to the Waldorf to consult with Mr. Herrmann, because they were anxious to obtain major league franchise, and had so stated at the meeting.

We had dinner at the Biltmore and that evening Rasin, Sinclair, Weeghman and witness went over in a cab to the Waldorf Hotel and were later taken into the meeting of Organized Baseball. Mr. Herrmann was made chairman, and after he finished his talk witness stated that their committee was there, appointed by the Board of Managers, and had full authority to accept or decline or complete negotiations. There was quite a discussion pro and con regarding things, and witness believes that then Mr. Janney made a suggestion to finance a major league franchise if Organized Baseball was willing to let them have it. Thinks they agreed to pay $250,000 or $300,000. During the meeting Rasin was seated along-side of witness, and was present when he made the statement in regard to the powers of the committee. Mr. August Herrmann, Chairman of the National Commission, presided, the suggestion that he do so having been ap-
577 proved by witness and his associates.

Counsel for defendants thereupon read in evidence the stipulation of counsel theretofore made on to wit, the eighth day of May, 1918, and attached to the deposition of Stuart S. Janney, which reads as follows:

It is further agreed between counsel for the respective parties that the stenographic report of the minutes of meeting of the special committees appointed by the National and American Leagues of Professional Baseball Clubs and the National Commission, with representatives of the Federal League, for consideration of the
578 readjustment of the baseball situation, held at the Waldorf-Astoria Hotel, in New York City, Friday, December 17, 1915, may be offered in evidence at the trial of this cause before the Supreme Court of the District of Columbia, without calling the official stenographer who reported such meeting to testify to the correctness thereof, subject, however, to any and all objections which the Plaintiff may make to the admissibility of said report or any part thereof.

Whereupon counsel for defendants offered in evidence said Minutes as a whole, as containing statements relative to the issues, made in the presence and hearing of the president of the plaintiff club, and giving a complete narrative of what occurred at the meeting, the purpose of said offer being to enable the court and jury to draw such inference as may be proper of what appears to have been the silence of the representative of the plaintiff and also as bearing on the question of whether there was a conspiracy on the part of the Organized Baseball defendants to disrupt the Federal League to the damage or detriment of the plaintiff, and further as bearing on the question of the good faith of the Organized Baseball defendants in entering into the Peace Agreement, to which offer counsel for plaintiff objected, which objection was by the court sustained and the stenographic report, as a whole, excluded, to which ruling the defendants then and there excepted and the same was noted on the minutes of the court.

579 Thereupon the defendants offered in evidence certain parts of said stenographic report for the purposes stated with respect to the whole, to which offer objection was made, but the Court admitted in evidence such parts of said report subject to exception,

and with the right later to move to strike it out, stating at the time that all the circumstances under which the arrangement was made ought to come before the jury and, without passing upon the legal effect of the evidence, let the circumstances come in in the way in which the arrangement was in fact arrived at, and further stating that the Court had read the minutes through and had found there were some things in them which might be prejudicial.

580 Thereupon counsel for defendants read in evidence the following extract from page 3 of the original stenographic report as follows:

Mr. Gilmore: I can say for the Federal League that the committee represented here tonight was appointed with full authority to discuss this proposition with you, and conclude any agreement that we might come to, and we are ready to open up the talk and see what can be done.

Whereupon the following questions were asked and answered by witness:

Mr. Gilmore, when that statement was made by you, are you able to tell us whether the president of the plaintiff club, the Baltimore Federal League club, was present?

A. He was there.

Q. Where was he? A. He was sitting either the first or second seat from me, I don't remember exactly.

Q. What, if anything, did he thereupon say? A. He did not say anything.

Defendants' counsel read in evidence the following, from page 14 of the original minutes:

581 "Mr. Gilmore: Let that matter be in abeyance and not ratified, or anything else, and go along, and when we get to the commission, we will go into details with them, and then we have authority to do anything that we want to do."

Counsel for defendants then stated to the witness: "I call attention particularly to the concluding clause, 'We will go into details with them, and then we have authority to do anything that we want to do.' In the first place, Mr. Gilmore, do you recall having made that statement?" The witness replied: "I do not exactly recall making that statement."

The witness further testified that he did recall the discussion respecting the tentative agreement, paragraph by paragraph, and the colloquy between Mr. Toole and Mr. Sinclair on that subject, but not the exact words that passed;-that Mr. Rasin was present, and was present throughout the meeting.

Defendants' counsel then read in evidence the following as quoted from page 14 of the original minutes:

"Mr. Toole: But now you have the authority, Mr. Sinclair?

"Mr. Sinclair: Now we have the authority.

"Mr. Toole: Does the Federal League ratify what you did that night, so far as it goes?

"Mr. Sinclair: Not in the present shape that it is in.

"Chairman Herrmann: Well, to clear this particular paragraph, I may state that on behalf of the two major leagues we will not exercise

that option. We will leave the matter entirely to the Federal League.

"Mr. Gilmore: Let us hold that in abeyance, Mr. Chairman,
582 until the commission and our committee get together, and we can then thresh it out."

The witness then testified that he heard this portion of the colloquy between Mr. Toole and Mr. Sinclair and remembers it distinctly, and that he now recalls making the statement to the effect that the provisions of the former tentative agreement should be held in abeyance until they got to the commission, and then that the commission and their committee would get together and thresh it out; that when he refers to "the commission" he means the "National Commission."

Defendants' counsel then read in evidence the matter appearing upon page 15 of the original minutes as follows:

"Chairman Herrmann: I understood you to say that your committee now has full power to act, Mr. Gilmore?

"Mr. Gilmore: We do now have full authority to act, and I think Mr. Hempstead's suggestion is a good one."

Defendants' counsel then read in evidence the matter appearing upon page 16 of the original minutes as follows:

"Chairman Herrmann: I understand, Mr. Gilmore, you state now that you have authority to act on behalf of the Federal League, that is, your committee."

"Mr. Gilmore: We have full authority, Mr. Herrmann."

Defendants' counsel then read in evidence the matter appearing upon page 27 of the original minutes as follows:

"Mr. Toole: My suggestion is that the matter having been by the joint action of the National and American Leagues delegated, on the basis of this memorandum or protocol, or whatever you may call it, as the basis for further negotiation and further elaboration,
583 that having been delegated by the two committees of the two leagues to the National Commission, I ask that the Federal League Committee here present, with authority to act, will now say, 'We also, with that as a basis of negotiation and elaboration, are willing to take it up with the National Commission and work it through to a working agreement.'

"Mr. Gilmore: We have already agreed to that.

"Mr. Toole: That is all there is to it, I think."

Defendants' counsel then read in evidence the matter appearing on page 42 of the original minutes as follows:

"Chairman Herrmann: Mr. Sinclair has informed me there is a representative from the Baltimore Federal League Club that would like to be heard.

"Mr. Stuart S. Janney: We feel just as I suppose everyone feels, that peace is the very best proposition in baseball and for baseball. We are all willing to concede that, and we hope it will come about. There is in the proposal which has been adopted, and which has been signed by certain parties—the situation in Baltimore is not touched upon and it seems to me important in several aspects. In the first place, Baltimore has a population of 750 or 800 thousand people, including the suburbs, which are not included, however, in the city limits, and therefore do not appear in the census.

"We are willing to purchase and pay for a franchise in the major leagues, if we can get it, and we want that to be the main keynote of our situation this evening. It is really the starting point of our whole experience in baseball. It is that here is a town where
584 the people are devoted to baseball, and they will patronize it.

"In addition to that, in a city of that size, if there is going to be peace, it ought to be a permanent peace, and if it is to be a permanent peace you do not want to leave open a community of that size and representative proportion to its population and importance in the league.

"We are not venturing to suggest to you gentlemen just what franchise we think that would be. You could work that out probably better than ourselves, but that is our starting point, and that is what we would like to see, and which we lay before you.

"Baltimore is not mentioned in the proposals that you have heretofore considered, and we think that that is—we want that to be taken up with every consideration, and if the answer is this, if you state or suggest that Baltimore would not pay the rest of the teams what the city does from which the franchise might be moved, we would be willing, and we will say, that it will guarantee to pay as much as the city from which it is moved. In other words, the patronage there, we are willing to stand back of. We know it is there. We know that the people attend the games, and we know we can produce the same revenue for a visiting team that has been produced by the city from which it will be moved. Now we would like to have you consider this.

"We have several times brought forward this thing in a tentative way before the organization of the Federal League, Baltimore has, but it has never received a real hearing because everything was not settled, but in making a general peace, a general settlement,
585 it seems to me most ill-advised that that large community should be overlooked. The only objection heretofore made is because it is not in the West, or it is in the East, and there are already four cities in the East which are larger, which have franchise, but when you consider it takes eight cities to make a league, and it is not necessary that four be strictly in the East or four in the West, it can be grouped with the Western cities, and it is a night's jump from there to any western city. Chicago, for instance, we can leave at 6 o'clock in the evening and be there in time to play the next day, so there is no actual objection there; there is no objection on that score. That the attendance would not be such as to justify this, we will cover that by suitable guarantees, but given the principle that Baltimore shall be admitted into a major league franchise, then there won't be any difficulty about arranging the details. We are here to do that.

"We represent a large body of representative citizens there, and we will see to it that suitable guarantees are given to back up every word that I have said. That is our position, gentlemen, and we do not ask anything; we do not ask anything if we could be given the privilege of buying and locating a major league club in Baltimore, at a reasonable business price, a franchise in this league, in either one or the other of the two major leagues which you represent. We do not ask

anybody to sacrifice anything or to contribute to us. We are willing to stand in our own position and come forward and back our words with deeds and give you suitable guarantees. Does that fairly
586 set forth the position which we have? (Addressing Mr. Gilmore and Mr. Sinclair). If there is anything else which I may have overlooked, remind me of it."

The witness further testified that he recalls an extended colloquy following the foregoing statement by Mr. Janney in regard to the acquisition for Baltimore of a major league franchise.

Whereupon defendants' counsel read in evidence the matter appearing on page 63 of the original minutes as follows:

Mr. Gilmore: Mr. Chairman, I am prepared to name a committee to meet the National Commission. I will name Mr. Sinclair, Mr. Weeghman and myself.

Chairman Herrman: That is satisfactory."

Defendants' counsel then read in evidence the matter on page 68 of the original minutes as follows:

"Chairman Herrmann: Are you gentlemen ready to do that now, to have a joint meeting of the attorneys? We cannot have it tomorrow, but Monday in Chicago, and inform them of what we have done, and get their views, and then present the matter to Judge Landis.

"Mr. Gilmore: We are prepared to do anything, Mr. Herrmann. We are acting in good faith, and we are prepared to do anything to bring about an honorable adjustment."

Defendants' counsel then read in evidence the matter appearing on page 59 of the original minutes as follows:

"Mr. Minor: If you will pardon me, Mr. Johnson, there was one paragraph of that agreement which was deferred to wait until Mr. Janney came in, and that is all this is subject to condition that the suit in Chicago will have to be dismissed because we will not
587 put ourselves in the position of doing the thing in the teeth of a decision that is pending. You simply wanted to get your lawyer's opinion.

"Mr. Janney: The concurrence of attorneys on both sides, if an agreement is reached, there would be no difficulty in disposing of the suit.

"Mr. Minor: It was very properly put in this agreement, and that was one of the paragraphs that was laid aside, or rather the consideration of it was deferred until you arrived. I do not want to put myself in contempt of court. That is all right, is it?

"Mr. Gilmore: Yes, we understand that.

"Chairman Herrmann: Mr. Johnson suggested if this agreement is approved in a tentative way, the Federal League appoint a committee of one or two, two say, to act in conjunction with the National Commission and to work out the details.

"Mr. Gilmore: As long as there are three on the National Commission, would not a committee of three of ours be acceptable?

"Mr. Johnson: I do not think any objection could be offered to that. That is purely a matter for the Federal League gentlemen to decide, entirely.

"Mr. Minor: I think they are entitled to the same number as there are of us.

"Mr. Janney: Mr. Herrmann naturally does not want it too cumbersome, but I do not think three would make any difference.

"Mr. Minor: I would suggest you do not make it any larger than three.

588 "Mr. Janney: Oh, no, no larger. Might I suggest this. You will note there is absolutely nothing in the proposals that have been before the league with reference to Baltimore. Would it be within the purview of the National Commission to take up the question of some other method of settlement to meet the Baltimore situation, if the one we have suggested is not agreeable? It would be within your authority and purview, and that matter could be taken up with the Commission direct, or would that be a matter of discussion here.

"Mr. Minor: Those are all matters that would be taken up, don't you think so, Mr. Johnson?

"Mr. Johnson: Allow the Federal League to appoint a committee, and they could meet with the Commission immediately, and we can determine when we will proceed.

"Chairman Herrmann: Yes, and I am quite sure we would want to call in a committee representing the National Association, because I, for one, would be willing to lend my good offices in any way that I can to clear up this whole situation.

"Mr. Janney: That is what I felt. It is a situation that should be cleared up, and the things mentioned in the proposal that are reduced to writing—if it is in the power of the Commission to take that up with the committee, it is all right, but if it is a matter that should be discussed before you all, then we should discuss it.

"Mr. Toole: They have full power to act.

"Mr. Janney: Then that is satisfactory."

Counsel for defendants then read in evidence the matter appearing upon page 70 of the original minutes as follows:

589 "Mr. Janney: This is an essential part of the settlement. This suit and everything else is a part of the settlement. I do not think that you would suggest that there is any discourtesy to the Court in two litigants, who have something before the Court pending, to compose their differences, and inform the Court of it. This will result in the composition of that difference, but why in the world should we be held up while the attorneys consult in Chicago, in carrying out the matter which you gentlemen are here to carry out and we are here to carry out?

"Let that be done, and we, in good faith, are here for the purpose of signing and fixing up and concluding peace, which will involve the dismissal and disposal of that case. Do not let us get apart and put off for any period of time, while attorneys talk out in Chicago and elsewhere with the Court about what they are doing. That can be arranged to the satisfaction of the Court, and I am sure Judge Landis would be only too glad to know that the matter is under consideration for adjustment, so there would be no discourtesy. This

is part and parcel of the agreement. We do not do things in part. This is one, whole composition. Let us do it altogether and complete it and do it while we are together, instead of waiting for two weeks or three weeks."

The witness was asked what if anything was done subsequent to this meeting on December 17, 1915, by the committee of three which he then appointed consisting of witness, Mr. Weeghman and Mr. Sinclair, and he replied that a meeting was called to meet
590 the National Commission in Cincinnati on December 21 or 22, at which meeting there was a lengthy discussion as to what should be done and how the agreement should be finally concluded. The tentative agreement only covered the Chicago, Brooklyn and Pittsburgh situations, and others were taken up one by one. Discussed the Buffalo situation thoroughly, and also the matter of Baltimore's buying the International League franchise. Baltimore was not represented, and witness phoned Rasin to ask if they would take $75,000, and Rasin said "No." Sinclair suggested that the Buffalo and Baltimore situations be left open to be settled by a committee of seven, to be composed of the National Commission, Barrows, of the International League, Gilmore, and one member each from Buffalo and Baltimore, who were to meet at a later date and try to make adjustment. This was embodied in the 7th section of the peace treaty. Witness thought $75,000 should satisfy the Baltimore club, in view of the Federal League's financial condition and inability ever to operate again. It was more than Pittsburgh was to receive. The telephone conversation with Rasin preceded the actual signing of the peace agreement. Witness did not have any authority to make the offer, but felt that Organized Baseball was showing sincerity in their negotiations. Believes Dunn who was there, offered $50,000 for the Baltimore Park, and witness felt he could arrange for immediate payment of the $75,000 to settle the Baltimore matter. But the effort at adjustment failed, and the peace agreement was signed by witness as president of the Federal League, and received the assent of the Federal League committee of three.
591 The matter of a payment to Baltimore was taken up for discussion in the Cincinnati meeting, and everybody was present. There was a later meeting in the early part of January, about the 4th or 5th, and whether any definite amount to be paid Baltimore was then discussed witness does not recall. Janney was in Cincinnati at the time, and refused to attend the meeting, "and therefore we were unable to accomplish anything."

Thereupon the witness was asked to state his opinion of the value of the franchise of the Baltimore club during the summer and autumn and early winter of 1915, and he replied: "I do not believe they could have gotten anybody to accept it free of charge. I think it would have been a liability for anybody at the close of the 1915 season."

The witness further testified that the grounds for this opinion are that Baltimore could not have operated without seven other units, and that he did not know where they could have been obtained.

Kansas City and Buffalo had defaulted in their payments, which necessitated that witness borrow money from Sinclair and Ward to meet the payments so that Organized Baseball would not know their true financial condition; that there was no chance for the Federals to operate as a six club league. All had expressed themselves at numerous times at meetings held during the season of 1915 as against this plan. The Kansas City and Buffalo clubs had failed because of lack of patronage and their tremendous overhead expenses and inability to get some one to put up more money. Witness attributes lack of patronage to general conditions.

592 Cross-examination.

By Mr. Douglas:

Q. Mr. Gilmore, you were the promoter and organizer, and in a sense the father, of the Federal League, were you not? A. No, sir.

Q. Did you assist in promoting the Federal League? A. The Federal League was organized at the start of 1913. I did not know anything of the Federal League until along about August of 1913.

Q. From that time on did you assist in developing and promoting the Federal League? A. I was approached by some of the people who owned the Chicago franchise in the Federal League. I had only been a baseball fan, but I had never heard of that at that time, and they were playing games of ball in the back yard of a church about four blocks from my home.

Q. You mean the Federal League was doing that? A. The Federal League was, yes, sir. And a couple of men I had never heard of, who controlled the Chicago franchise, were brought to me at the Athletic Club and stated that if they did not pay their ball players by the next night they would forfeit their franchise.

Q. Suppose we start where you started. What did you do to put it on its feet? A. After a few days' argument, I advanced some money to pay the players and carry out the season of 1913, thinking that would give me an opportunity to study conditions and decide in my own mind whether or not there was an opportunity

593 to invade certain territory and establish a third major league.

We completed the season and had our final meeting at Indianapolis, and at the meeting they disposed of the president and elected me Chairman of the Board.

Q. So that from that moment forth you became the head of the Federal League. A. Practically.

Q. Actually and legally head of the Federal League. A. I was appointed Chairman of the Board.

Q. And remained so until its end? A. Yes, sir.

Q. Did you do anything after you became the head of the Federal League, to see that the league and and its clubs became properly and efficiently equipped to enter business in good faith? A. I certainly did. I worked pretty hard.

Q. What did you do? A. The first thing I did was to get the Chicago end of it properly financed, and I thought I had done it through the assistance of Mr. Weeghman and Mr. Walker.

Q. Mr. Weeghman and Mr. Walker? A. Yes, sir.

Q. Mr. Weeghman is a very strong man financially, is he not, or was at that time? A. I do not know about his condition now.

Q. At that time he was? A. At that time he was supposed to be, yes sir.

Q. What was done to properly equip the Chicago Federal League Club? A. I had convinced Mr. Weeghman that we had
594 eight other representative cities before he would come along and spend money to build a ball park.

Q. But you did convince him? A. I did.

Q. He did spend the money? A. Yes, sir.

Q. And he did build a ball park? A. Yes, sir.

Q. At about what cost? A. About $300,000.

Q. A first-class place? A. That was for the equipment, yes, sir.

Q. I say, was that a first class place for a major league ball game? A. Yes, sir.

Q. It cost about three or four hundred thousand dollars? A. $300,000, I said.

Q. What next? What was done in Brooklyn? A. In Brooklyn I interested Mr. R. B. Ward along about February of that year.

Q. Did you interest him in this Federal League? A. Yes, sir.

Q. Go ahead. A. I met him in Toronto, Canada, and we discussed the matter, and finally he consented to investigate it, and about a week or two later, I think it was about the 22nd of February, he decided to embark in the business, and through the assistance of Mr. Harry Goldman we were enabled to obtain a piece of property in Brooklyn, and finally concluded the deal by signing a lease, with an option to buy.

595 Q. That was the Washington Park property? A. Yes, sir; and Mr. R. B. Ward had plans drawn up and let the contract for the construction of a stand, which was to be ready at the opening of the season.

Q. You were the individual, then, who induced Mr. Ward to come into the Federal League? A. Yes, sir.

Q. Of course, you did that in good faith? A. Yes, sir.

Q. For the purpose of conducting the Federal League in good faith? A. Yes, sir.

Q. Not for the purpose of creating a nuisance to be bought out by organized baseball? A. No, sir.

Q. So far you have gotten Mr. Weeghman, a strong man of Chicago, to invest $300,000 in a ball park there, and you have Mr. Ward in Brooklyn. A. Yes, sir. And Indianapolis——

Q. (Interrupting.) One minute. Mr. Ward was a very strong man financially and a very fine man generally, everybody says. A. Absolutely.

Q. A man of plenty of courage and liberality, and plenty of funds. A. Yes, sir.

Q. To do whatever he really wanted to do, in reason. A. Yes, sir.

Q. Tell us about the ball park he built at Washington
596 Park. A. In what respect? He built a magnificent plant there, seating about eighteen or twenty thousand people, at a cost of approximately $300,000.

Q. A fine location? A. We thought so at the time.
Q. You have not changed your mind since? A. Yes, sir.
Q. You have? A. Yes, sir.
Q. Did Mr. Herrmann induce you to change your mind about it? A. No, sir. Mr. Herrmann did not induce me to do anything.
Q. At any rate, you had a stand put up at Washington Park, or Mr. Ward did, at his expense, and properly equipped the Brooklyn club for business? A. Yes, sir.
Q. Then did you not induce some other very strong men to go into the Federal League? A. Not at that time. The others were in; Baltimore had sent a representative down to Indianapolis and applied for a franchise, and the franchise was granted, and I made two or three trips to Baltimore, I guess, to talk over the matter with Mr. Rasin and Mr. Ned Hanlon.
Q. Did you not induce your friend Mr. Sinclair to come into the Federal League? A. Not at that time.
Q. At any time? A. The following year. I did not induce him. Mr. Powers introduced him to me in Chicago, and the plan was outlined, and he seemed desirous of taking a chance, and we
597 arranged for the purchase of the Indianapolis franchise.
Q. You talked with him about it beforehand? A. Yes, sir.
Q. You told him you thought it was all right? A. I talked to him at that time. He was introduced to me by Mr. Powers at the Blackstone Hotel.
Q. I did not ask you who introduced you. You knew him? A. I did not know him until I was introduced to him.
Q. I assumed that. But after you were introduced to him, you did talk to him? A. Yes, sir.
Q. You talked to him about baseball? A. Yes, sir.
Q. About major league ball? A. Yes, sir.?
Q. About the Federal League? A. Yes, sir.
Q. About coming into the Federal League? A. Yes, sir.
Q. Did he not, as a result of that talk, and other talks and other considerations, take over the Indianapolis franchise, and with your approval transfer it to Newark? Is not that correct? A. Yes, sir.
Q. Then the Newark club took the place of the Indianapolis club when it fell by the wayside? Is that right? A. The Indianapolis club completed the season of 1914, and then the franchise was sold to Mr. Sinclair.
Q. So in the fall of 1914 Sinclair bought the franchise? A. In the early winter of 1915.
Q. And with your consent, and the consent of the Board
598 of Managers of the Federal League, it was transferred to Newark? A. Yes, sir.
Q. Did he not make quite an extensive and fine development there, in the shape of an investment in a park? A. He invested about ninety to one hundred thousand dollars in the construction of a park, and bought a piece of property over there comprising six or seven acres.
Q. And built stands, and so forth, at a cost of about $300,000, did he not? A. No, sir, about ninety to a hundred thousand wooden stands.

Q. Good stands? A. Good, yes, sir.

Q. Well adapted for major league ball? A. Yes, sir.

Q. Of course, Newark is very close to New York, is it not? A. I do not know the distance; about eighteen miles, I guess.

Q. In all, Mr. Gilmore, is it not true that before the end of the season of 1914, the Federal League had upwards of three million dollars invested? A. No, sir.

Q. How much would you say? A. If you count it down there, I will tell you. Indianapolis had invested about $75,000; St. Louis had invested about $200,000; Baltimore about $125,000; Brooklyn about $300,000; Buffalo about $100,000; Kansas City prac-
599 tically nothing; Pittsburgh practically nothing, except their operating expenses for 1914.

Q. You were speaking in those figures of the biggest investments, of course? A. The investment, and the cost of operation for 1914.

Q. You are not including in that the cost of players? A. I am not including in that the cost of their equipment, together with their loss for 1914.

Q. Including the purchase of players, I mean the contracts with players? A. The loss as the individual clubs reported to me. That is about the nearest figure.

Q. Kansas City lost, did it not? A. Kansas City, during 1914, lost, I think, $30,000.

Q. Have you given that figure? A. I overlooked that.

Q. Did Pittsburgh lose any? A. Pittsburgh, I guess, did lose some.

Q. Did you forget that, too? A. I did forget it. $60,000, I think, was their loss.

Q. So you forgot about $100,000? A. It seems so, yes, sir.

Q. As a matter of fact, I will ask you one more, if, in all ways, these clubs did not invest in this venture, in the Federal League, before you became president, and during the term of your presi-
dency, upwards of $3,000,000? A. I did not get the ques-
600 tion?

(The stenographer repeated the question.)

A. That includes the 1913 season, and in 1915 the construction of Newark Park, and it probably does amount to two million and a half or so.

Q. You became president when? A. I was elected president in Chicago, I think, in March, 1914.

Q. Was it during the spring of that year, April, or May, that Ward and Weeghman went into this? A. They had gone in previously. They attended the meeting, and the complete Board of Managers——

Q. They went in before you became formally president? A. Yes, sir.

Q. Before you were president, and when you were working to develop the Federal League, and during the period of your presidency, you thought the prospects for the Federal League were fine, did you not? A. I did.

Q. And, as far as you knew, and as far as you participated in it, this was a good faith effort to develop a third major league? A. And establish baseball in certain localities. I lived at that time on the North Side, and, if you permit me to say so, the National League was playing in the West side, and the American League on the South Side, and North of the Chicago River is about 800,000 population, and I felt at that time that there were plenty of people over there to support a good major league team.

601 Q. I think you made some reference in your direct examination to the large number of people who attended the games. Did the clubs draw more largely and extensively in the shape of patronage in Chicago in 1914, than your competitors? A. No. The American League far outdrew us, and as for the attendance of the National League, I am not conversant with how many people they did have.

Q. Did you not draw more than the National League? A. I do not know that we did.

Q. You do not know? A. No, sir.

Q. You continued, then, throughout the year 1914, to do everything you could to develope the Federal League? A. Yes, sir.

Q. I think you said—I may have misunderstood you in your direct examination—that along in 1914 everything looked fine, the prospects were good, and along about the middle of 1915 things began to look bad? A. I did not make that statement. I did not refer to 1914. I said that at the close of the 1914 season, after I had had an opportunity to induce Mr. Sinclair to come into the organization, and after we had been able to induce several players from organized baseball to join our organization, and before the opening, the prospects did look very bright.

Q. At the end of the 1914 season? A. Before the start of the 1915 season.

Q. But rather suddenly you came to the conclusion, in June, I think, and then afterwards you said July, things began to

602 look blue? A. Yes, sir.

Q. A rather sudden turn of events? A. It was not sudden. We started along about the 13th of April and it was probably in May that some of us realized that it was going to be a very poor season from a financial standpoint, and I know along about the middle of July we started to hold meetings to discuss the situation, because previous to that time I had been called to Buffalo, and I had been called to Kansas City, in an effort to induce other people to invest money. Their overhead was far in excess of their receipts, and they were all beginning to complain.

Q. When did you say you reached the conclusion that the Federal League was doomed? A. Along about the middle of June or the first of July.

Q. Were you absolutely convinced of that? A. I felt satisfied in my own mind to the extent that I began to figure out some way that we could at least save the ball players, and save our own reputations.

Q. By those general expressions, which I do not perhaps thor-

oughly understand and clearly comprehend, you began to look around and see what you could do about selling out? A. No, sir, never; never discussed the proposition.

Q. What did you mean by that statement, just now, to save your reputations? A. To do something to bluff these people to coming around and making some kind of an offer.

Q. You mean to sell out? A. Yes. Everybody knew it.

Q. You said just now you did not mean that. A. I did not get you.

603 Q. You said just now you did not mean that, when I asked you if you did not mean to sell out to organized baseball. A. To make some kind of a settlement that would protect each and every member of our organization.

Q. That was the only hope you had? A. It was very apparent to me. That was my idea, and I so expressed it to a couple of our wealthy backers, Mr. Sinclair and Mr. Ward.

Q. Did you do it to the others? A. No, sir, I did not.

Q. Sir? A. It was discussed in open meeting, but the plan I formulated I simply submitted to Mr. Sinclair and Mr. Ward, and also to Mr. Comstock.

Q. I will come to that later. You said you were hopeless and helpless, and you saw nothing to do but to sell out if you could sell out. You had then six clubs, I believe? A. We had eight clubs.

Q. Did you inform the other constituent members of the League, through their representatives or otherwise, in the summer of 1915, that you had reached that conclusion? A. I told them all in open meeting.

Q. You made no effort then to do anything else except to get off that stadium stunt of yours? A. No, sir. I made the suggestion then that I thought possibly we could operate the following season with six clubs, and I made the suggestion, but it did not seem to meet with the approval of anyone. I felt that we had invaded certain territory where they were entitled to major league baseball.

604 Q. You had no idea from June on that the Federal League would be able to prepare for the next season at all? A. I did not see any opportunity at all, no sir.

Q. You saw no sense in trying to do anything more than try to sell out? A. My idea at that time was to finish out the season of 1915, and finish it in good standing, pay off the ball players, and see what would happen.

Q. You know Mr. Hanlon of Baltimore, pretty well, do you not? A. Yes, sir.

Q. He is a pretty good baseball man? A. I think so.

Q. You are pretty good friends of his? A. Supposed to be.

Q. Did you tell Hanlon about the situation in the summer of 1915? A. I do not know that Mr. Hanlon was at these meetings. He attended most of them, and if he was there, I suppose he heard the discussion.

Q. I ask you a very direct question, and you can answer. Did you ever tell Hanlon, either in meeting or out of meeting—now, follow me closely—did you ever tell Hanlon in meeting or out of

meeting, in the early summer or fall of 1915, that the Federal League was doomed and it could not resume after the end of the season? A. I do not recall that I did.

Q. Why did you not? A. Because I told the president of the club, and he was a representative of the club, and I certainly told him, and he knew.

605 Q. You told Mr. Rasin that? A. Yes, sir, absolutely.

Q. When? A. During numerous meetings in the season.

Q. Did you tell Rasin that you thought that he ought to try to sell out to organized baseball? A. I did not tell him that, no.

Q. Did you tell Hanlon that? A. No. I did not tell anybody that we ought to try to sell out. I said that we ought to make a settlement in some way whereby our operating expenses would be reduced.

Q. You mean a settlement with whom? A. With organized baseball. They were our only competitors. They were the ones who were bidding for players against us, and increasing our overhead expenses to such an extent that I did not see any chance to continue operations.

Q. That is what made it impossible for you to continue operations, was it not? A. The large overhead expense and the small attendance.

Q. Your inability to get ball players at reasonable and livable prices was the essential vital thing that broke your back, was it not? A. I think it was; that, coupled with lack of attendance. We could have paid any price to players, if we had had enough people come to the park to pay the admissions.

Q. As a matter of fact, except in spots, you could not get the ball players that you needed for first class major ball. Is not that

606 true? A. We were able to get most of them that we went after.

Q. You had to pay such enormous prices for them that you could not stand the overhead. Is not that right? A. Absolutely.

Q. You had to do either one of two things, you had to pay the high prices, that you call overhead, for players, or not get them, did you not? A. Yes, sir.

Q. And if you did not get them, you could not get attendance, and you could not make any money. Is not that right? A. We could not make any money, certainly.

Q. And if you did get them, you would have to have enormous attendance, or you would be broke before you started, would you not? A. We would lose money right along.

Q. So it would be a case of being damned if you did and damned if you didn't. Was not that your situation? A. If that is the way you put it.

Q. You had sufficient equipment, did you not? A. We had the equipment as far as ball parks was concerned.

Q. And you had some pretty strong, courageous men, fine characters, and of fine ability, and plenty of money to make the Federal League go if you had had a fair chance, a living opportunity. Is not that true? A. It was up to them as to whether they wanted to continue to spend money and lose money or not.

Mr. Douglas: Repeat my question.

(The stenographer repeated the question as follows:)

607 "Q. And you had some pretty strong, courageous men, fine characters, and of fine ability, and plenty of money to make the Federal League go if you had had a fair chance, a living opportunity. Is not that true?"

The Witness: Read that over again?

(The stenographer repeated the question.)

A. We had a fair chance.

By Mr. Douglas:

Q. You did? A. I think so, yes. We had an equal chance with anybody else.

Q. An equal chance with organized baseball? A. Absolutely.

Q. Do you mean that? A. I certainly do.

Q. What did you mean by saying a while ago, then, that if you could have gotten players at a reasonable price you would have lived, and would have gotten along all right? A. I meant if we could have gotten them at a reasonable price, but we could not get them at a reasonable price. But we had an equal chance with organized baseball if we wanted to pay as much as they did.

Q. You had an equal chance with other people to pay a foolish price for them. Is that what you mean? A. I mean if we had wanted to pay as much as the other fellows, we could have gotten them. But we did not think it a business proposition to pay ball players eighteen or twenty thousand dollars a year.

608 Q. What made that situation? A. Competition, I suppose.

Q. You mean the absence of competition, do you not? A. No, There was competition, was there not?

Q. Do not ask me. If you do not know any more about baseball than I do, you had better not ever go into ball. A. We were competing with the National and American Leagues for patronage, were we not? Do you not call that competition?

Q. Do you not attribute your situation to the fact that there were fenced in practically all the available ball players of the United States, and that that fenced in business had been effected and accomplished by organized baseball by means of what is known as the reservation clause? A. I do not quite understand you in that fenced in. We did not consider their contracts valid.

Q. Were they not en*l*osed? Were they not corral-ed? A. Not that I know of. Corralled in that way? Organized baseball had them, and they were the only big major leagues.

Q. I suppose you have heard sometime or other in the past of what is known as the reserve clause in organized baseball contracts, have you not? A. Yes, sir.

Q. Did not that have the effect of compelling the baseball play-

ers, upon the pain and penalty of being blacklisted, to stay in organized baseball? A. I was never a ball player, and I do not know what their feeling was, or what effect it had on them.

Q. You do not? A. No, sir.

609 Q. You never felt the cold steel of that yourself, as president of the Federal League? A. I never felt it, no.

Q. You never did? A. No.

Q. I wonder if you ever heard of it. A. I heard of it, yes, sir.

Q. When did you first hear of it? A. When I entered baseball.

Q. You never heard of it before? A. No, sir.

Q. You were a fan all the years preceding that, and never heard of organized baseball having a reserve clause until you entered the Federal League? A. No, sir, I never heard of it.

Q. The whole thing was a surprise to you, was it? A. Yes, sir, it was.

Q. When did you find it out? A. When we discussed it with our lawyers. I did not go into the legal phase of this. We were represented by Myers & Gates, of Indianapolis. They examined their contracts, and in their estimation the contracts were void and gave us the privilege of doing business with these individual players.

Q. You had complaints about the effect of the reserve clause, had you not? A. At that time, no, sir. I told you I did not know anything about it.

Q. Give me approximately the date when you first found it out. A. Probably along at the close of the 1913 season, when we took up the organization of the Federal League for the following year.

610 Q. That was before you became president of the Federal League? A. Yes, sir.

Q. So that before you became president of the Federal League you knew of the reserve clause? A. I knew of it, yes sir.

Q. And you knew of the fact that it was pretty universally in the contracts of organized baseball, did you not? A. I presume it was.

Q. About how many players were affected, in a general way, by the reserve clause? A. I have not any idea.

Q. Were not there as many as some five to ten thousand? A. I could not tell you.

Q. Did you have any experience in trying to employ ball players? A. Yes, sir.

Q. Do you not know that they made the point that they were under reserve, and if they should jump their contracts or jump the reservation clause of organized baseball, they would be blacklisted by organized baseball? A. Some of them were a little dubious about jumping it, but as to the penalty, I do not know anything about that. I know that I was informed by our attorneys that the reserve clause was invalid, and that we had a right to deal with these people, and we so instructed the ball players. We offered them sufficient compensation——

Q. Did you want to get that reserve clause out of your way?

611 A. That was all up to the lawyers of our league.

Q. The lawyers were hardly running the league. I am

asking you as the president of the Federal League. A. It did not bother me at all.

Q. It did not bother *me* at all? A. No, sir, not a bit.

Q. It did not affect you in the slightest degree? A. Not a bit, except it probably brought on a few lawsuits, that were defended by our organization. All that was handled by our attorneys.

Q. Did you not generally have to make a three year contract with baseball players? A. Some of the good players insisted on a three year contract.

Q. Why? A. Because they felt they were being pretty well paid, and they would like to protect themselves, I presume, the same as any business man.

Q. Protect themselves against what? A. Against being discharged.

Q. Could they go back to organized baseball if they had lost their jobs, if you failed? A. I do not know whether they could or not. If they possessed sufficient ability to warrant their employment, I presume they would have been taken back.

Q. Mr. Gilmore, I want to ask you this, did you ever hear of the ineligible list of organized baseball? A. I heard that there was such a thing after I had been with the Federal League for six or seven months.

Q. When did you first hear of it? A. I cannot tell you the exact date. I heard our attorneys speak of it.

612 Q. Did you not know of it before you became president of the Federal League? A. I may have heard of it before I was elected president.

Q. Will you say whether you did or did not? A. I cannot say that I did.

Q. You cannot say that you did? A. No, at that time.

Q. I will ask you, did you not talk to the baseball players, and did they not tell you that they had to have a three year contract so as to at least provide against a rainy day, and put off the rainy day as long as they could, because they could not go back to organized ball? A. I just told you that, that they felt they were taking a chance, and some of them wanted a three year contract, although others signed up for one year.

Q. The majority of them demanded three year contracts? A. I do not know whether the majority did.

Q. You have seen the contracts, you examined them? A. Certainly I examined them.

Q. The contracts were in your office, were they not? A. Yes, sir.

Q. Did you look at them? A. I looked at them, certainly.

Q. What percentage of them do you say were for one year? A. I could not say off hand.

Q. Would you not say nine-tenths of them were for three years? A. No, I would not say nine-tenths. Some were one year, and some two years. The majority of them were three year contracts.

613 Q. And you had to employ, I mean your clubs had to employ, did they not, the older ball players who were getting ready to pass up the stage? A. No, sir, we did not feel that way.

We felt that if we could get five or six players who were stars on our league, we could probably pick up some boys off the sand lots.

Q. You misunderstand me. I asked you how the ball players felt. Was it not true that the only fairly good players you could get were people who had been a long time in baseball, and did not have very many years yet to come in their baseball life or activities, and therefore they would take the chance of being employed by the Federal League, when the younger fellows would not? A. I think there were some younger men.

Q. Generally speaking, did you not suffer from that? A. No.

Q. You did not? A. No, sir.

Q. Then a young fellow with ten years in front of him would be just as quick to jump his contract with organized ball and come to you as a man who had played ten or twelve years? A. If we would make the inducement sufficient.

Q. You tell this jury that a young fellow would have ten or twelve years to come in his active career, in his professional baseball career, would be just as ready to come to you as a man who had played ten or fifteen years? A. I do not know anything about that, except that it was our desire and idea to get five or six men on each team, men who had been in baseball five or six years, to come in there and steady the young fellows. We did not take all our men from organized baseball, you know.

614 Q. You took most of your best players from organized baseball? A. Yes, we had good players, men of our own who could steady the younger players.

Q. You needed something more than steadiness, didn't you? A. We had men of ability.

Q Everything else being equal, a man who has been in professional baseball four or five years is better than the man who has been there for fifteen years, say? A. It all depends on whether the young men would have ability. Many things could enter——

Q. But everything else being equal, comparing a man who has been in professional baseball four or five years, he is better than the man who has been in it fifteen years or over? A. Yes, I don't think we took any men who has been in baseball for fifteen years.

Q. You took some who had been in for ten years? A. Anywhere from five to ten years. I do not know of any that I can recall now that were in over ten years.

Q. Could you name any of these ball players of any moment that did not come out of organized baseball? A. I cannot off-hand, no. I would have to get the record. I have been out of it four years, you know, and have not given any thought to baseball in that time.

Q. You have almost forgotten the incident? A. Yes, sir.

Q. I want to come back a minute to this reservation business, so as to understand clearly what you mean. I did understand you to say, and I want to ask if I am correct in the understanding that

615 you did not feel, as president of the Federal League, any substantial hurt or inconvenience from the operation of the reserve clause in the contracts of the various players with organized ball. A. It did not worry me at all.

Q. You might have been worried about the Federal League. A. I did worry about the Federal League but I did not worry about the reserve clause in the contracts.

Q. You were familiar with the reserve clause in those contracts, generally, were you not? A. In about the early part of 1915 I was told of the reserve clause in the contracts by our attorneys.

Q. You got all of your knowledge about major baseball from the lawyers? A. I was very busy doing other things, and I left those matters to our attorneys.

Q. Did you leave it to your attorneys to find out for you, as president of the Federal League, the real economic contra-tual conditions that existed with reference to the players in your league? A. As far as the contracts were concerned, yes, sir.

Q. The effect of the contracts on your business—you left that to the lawyers, too? A. Yes, sir.

Q. You had therefore nothing to complain about so far as organized baseball was concerned? A. Not at all.

Q. You knew there was such a thing, I suppose? I knew that there was, yes, sir.

616 Q. It was big enough to see without glasses? A. Yes, sir.

Q. How big were they? A. It was not so gigantic; it was not big enough to worry us.

Q. They were not? A. No, sir.

Q. It takes a pretty big thing to worry you, I suppose? A. Yes, sir.

Q. How big was it? A. You probably know about as well as I do.

Q. I am incined to think that I know more about it than you do, by the way you talk. A. It consisted of 16 clubs playing baseball in the large cities of the United States.

Q. Is that all? A. Yes, sir.

Q. How about the minor leagues? A. They were a part of it, I suppose.

Q. How many of them? A. I don't know.

Q. Can you come within a hundred of stating how many there were? A. You mean a hundred minor leagues?

Q. Can you come within a hundred of the number? A. I would say about 15; that would be within a hundred.

Q. Is that the answer you wish to give this jury. A. I say 15 would be within a hundred.

Q. What is the estimate? A. Fifteen.

Q. Were they in organized baseball? A. I don't know anything about their affiliation with organized baseball.

617 Q. When did you first get that information that perhaps they were? A. That perhaps they were in organized baseball?

Q. Yes. A. I say in the early part of 1914 I was given considerable information about the organization of the National and American Leagues and the minor leagues.

Q. Did you induce Mr. Ward to put three or four hundred thousand dollars into this business? A. Yes, sir.

Q. And your friend Mr. Weeghman three or four hundred thousand dollars? A. Yes, sir.

Q. And your friend Mr. Sinclair, almost as much money in this business? A. Yes, sir—not that much money, no.

Q. You can trace about a million dollars that you got into the Federal League baseball, can't you? A. How much?

Q. Upwards of a million dollars, in round numbers? A. Yes, sir.

Q. When you got those men to go into this business you did not know anything about the condition of the baseball business in the United States? A. I knew a little about it.

Q. What did you know about it? A. I simply felt that there was room for a third major league. I thought the city of Baltimore with seven or eight hundred thousand people was entitled
618 to major league baseball; I thought the north side of Chicago was entitled to representation. I was told by our attorneys that under the rules of organized baseball there were certain cities invaded and certain territory invaded, and other clubs could not invade that territory.

Q. Did you know anything about the state of competition? Was there any competition in baseball then in the United States—in professional baseball? A. Was there any competition?

Q. Was there at that time when you induced Ward and Weeghman and Sinclair to come into the Federal League; was there at that time, apart from what the Federal League was doing, any competition with organized baseball in the United States. A. I don't think so, no, sir.

Q. It had the field to itself? A. Yes, sir.

Q. How big was the field? A. It covered the United States.

Q. And that was not big enough to flatten you at all? A. No, sir.

Q. You knew of the National agreement, did you, at that time? A. I was told about it.

Q. Before you went into it? A. I learned more about the National agreement when we had the suit up in Battle Creek, Michigan, over a player we had taken from the National League.

Q. But you knew of it originally? A. Yes, sir.

Q. You knew that the minor leagues and the major leagues were banded together, did you not? A. I know they were gov-
619 erned by a body.

Q. Did you know the fact that the National League had in 1903 made a peace pact, not just like yours, but a peace pact nevertheless, with the American League so as to bring together the two then only major leagues in the United States? A. I knew that there had been some difficulty along about 1901 or 1902, and Mr. Johnson organized the league. I knew there had been some little trouble in bidding up the players, and so forth, and the expenditure of a large amount of money. I knew there had been a settlement. As to what it was I did not know anything about it.

Q. You therefore knew there was such a thing as organized baseball that occupied the field in the United States? A. I did not know anything about their organization, no, sir.

Q. Mr. Gilmore, did you have anything to do with the filing of the suit against organized baseball in the northern district of Illi-

nois? A. That matter was handled by our attorneys. I guess I signed the bill.

Q. The lawyers have so many sins to answer for I don't want you to put them all on us. Did not you sign the bill in this case? A. I did sign it.

Q. Did you swear to it? A. I am sure I signed the bill, yes, sir.

Q. Did you swear to it? A. Did I swear to the bill?

Q. You heard me ask the question. I suppose I meant it when I asked it. A. I swore to it.

620 Q. Sir. A. I swore to it.

Q. Did you swear to the truth when you did so? A. Yes, sir.

Q. What you believed was the truth? A. Yes sir.

Q. Perhaps you will recognize this when I read it to you, as the affidavit to this bill:

"STATE OF ILLINOIS,
*County of Cook, ss:*

"I, James A. Gilmore, being first duly sworn, state that I am President of the Federal League of Professional Base Ball Clubs, which is the plaintiff in the above-entitled cause; that each and every allegation in the foregoing bill of complaint is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to these matters, I believe it to be true. I hereby incorporate the foregoing bill into this affidavit and refer to the same with the same effect as if it were herein repeated specifically and at length."

You remember that, don't you? A. I remember the bill, yes, sir.

Q. I am going to try and get through with you and not ask any questions that I can properly omit. I will ask you if you did not swear in the first paragraph of the bill to the following. I asked you about this a moment ago:

"That the constituent members of the plaintiff are all corporations organized and existing for the purpose of engaging in the business of baseball; that each of the constituent members of the Federal League owns or leases and operates amusement plants or parks in the several cities of the relative states of their incorporation hereinafter shown, and they have invested in connection therewith and in connection with their said businesses large sums of money, in the aggregate in excess of the sum of $3,000,000; that the following is a list of the corporate names of such constituent members,

621 their states of incorporation and principal places of business?

A. What was the date of that bill?

Q. The 5th day of January, 1915. Did you swear to the truth? A. Whatever I said approximately—what is the amount there?

Q. It is up to you to reconcile the difference, not me. A. I swore to the bill. At that time we probably figured it up around that amount.

Q. It was fresh in your mind then, was it not? A. Much more so than now.

Q. And much more apt to be correct than anything you said now, because you say you had this thing out of your mind for two or three years? A. Four years.

Q. This is more apt to be correct than the statement you make now? A. Certainly.

Q. I asked you also if you had any idea about the number of players engaged in professional baseball at that time, and I asked you if it was five or ten or six thousand, but you did not know. I will ask you if you did not swear to this, in the fourth paragraph of the bill:

"That there are now in the United States about ten thousand professional baseball players of varying degrees of expertness; that all of said ball players, with the exception of about three hundred under contract to the Federal League, are under the domination and control of the National agreement, the rules and regulations of the National Commission and the National Commission, as hereinafter alleged, and are in the service of the National League,
622 the American League and the various minor leagues hereinafter referred to, all operating under the National Agreement and the rules and regulations of the National Commission."

A. Those figures were probably before me at that time. I have been out of it four years and I cannot off-hand recall the number of ball players in the country at that time. If I swore to it it was to the best of my knowledge and belief that it was so.

Q. There is no reason to think it was not correct, then, and no reason to think it is not correct now; is that right? A. Yes, sir.

Q. I think you stated, and if I am in error I wish you would correct me, that you did not feel the effects of this domination and control of players with reference to the reservation clause, and so forth. A. You asked me if I felt the effect of the reserve clause and was worried about it, and I told you I was not.

Q. And you said you did not feel it? A. I said I was not worried about it.

The Court: The record will show what was said.

By Mr. Douglas:

Q. I will let the record speak for itself then. Did you not swear to this: "That heretofore, during the existence of the National agreement, and the rules and regulations of the National Commission, and now, said National, American and minor leagues have claimed and asserted the absolute right and title to all base ball players in their ranks, and have heretofore claimed and now claim that once a baseball
player is a member of any club operating under the National
623 agreement and the rules and regulations of the National Commission, such player always continues to be subject to the demands of the various clubs operating under the National Agreement and the Rules and Regulations of the National Commission and is at no time and under no circumstances entitled to contract with any

club not operating under the National Agreement and the rules and regulations of the National Commission, except when all of the clubs so operating have indicated that they no longer desire the services of such player, all of which claims, among other ways and means, are enforced and accomplished by and through the instrumentalities of the National Agreement, the rules and regulations of the National Commission, and said National Commission hereinafter referred to, and to which all of the constituent members of the National League, the American League, and the minor leagues are, through their various officers, parties, and are controlled thereby; that said claims are, also among other ways, enforced and assomplished through the so-called reservation list caused to be maintained by said National agreement, the rules and regulations of the National Commission, as well as the maintenance of black-lists, and by means of threats and intimidations, all of which are hereafter more specifically referred to and set out?" A. I did.

Q. Was that true? A. Our attorneys made a thorough study of all the agreements and papers of so-called organized baseball, and I acted according to their advice.

Q. Is that all you have to say about that? A. Yes, sir.

Q. I understood you to say you knew nothing about any blacklist or any ineligible list, a while ago. A. I told you that before the opening of the 1914 season I was told about the blacklist and the reserve clause, and those things, by our attorneys.

624 Q. I suppose you got the threats and intimidations that you swore to, from your lawyers, too, did you? A. The threats that were being made by organized baseball?

Q. Such language as this, "And by means of threats and intimidations, all of which are hereafter more specifically referred to and set out?" Did you get information about threats and intimidations to your league, of which you were president, from your lawyers in Indianapolis? A. Probably there were threats made at that time but I do not recall them. There were many things that happened at that time that are not clear in my mind right now.

Q. Will you say that you cannot recall any threats? A. Explain what you are talking about. Threats from organized baseball against certain ball players?

Q. Against your competition, the Federal League? A. Threats from organized baseball against the Federal League?

Q. I will give you a chance to explain what you mean by this. I did not use that language. What did you mean? A. Let me see it and I will read it over.

(A pamphlet was handed to the witness by Mr. Douglas.)

A. I presume that is threats by organized baseball against players who had jumped the reserve clause and joined the Federal League. I presume they might have made some threats.

Q. That is as near as you are willing to put it now, that you presume they might have made some threats? A. Yes, they probably did make some threats against players, that if they left they might be blacklisted.

625 Q. Did you have any trouble or controversy with anybody about contract jumpers? A. You mean men jumping National and American Leagues contracts, to come with the Federal League?

Q. Can't you tell us what you mean by contract jumpers? A. A contract jumper is a man that has a contract with a certain organization and leaves it and goes to another organization. We had plenty of discussions regarding that matter.

Q. You had trouble with them about that? A. We had plenty of talk about the matter.

Q. I used the word "trouble." Did you not have trouble with organized baseball about that? A. We had suits brought by organized baseball to try and retain certain of their players we had taken from them.

Q. Claiming them under the reservation clause? A. Yes, sir.

Q. And you generally won out in them, too, did you not? A. I don't think we got all the decisions.

Q. You don't think so, you say? A. Well, there was a suit decided at Battle Creek, I think in their favor, if I remember correctly, the Killifer case.

Q. Do you remember any in favor of the Federal League? A. I think the Chase case at Buffalo was decided in our favor.

Q. Do you remember the George Johnson case? A. I don't know the result of the Johnson case. I remember there was such a case.

Q. I will ask you if you swore to this, and if you did if it was true. I read from page 14 of your complaint which is also paragraph 4:

626 "That the National League, in addition to the control conferred upon and exercised by it over the individual games of baseball, and the players engaged with its constituent members, defendants to this bill, is by its constitution or fundamental law given the exclusive control over the territorial or franchise rights of the several clubs composing its circuit, except as such exclusive control is in turn dominated by the National Agreement and the rules and regulations of the National Commission and said National Commission; that said constitution or fundamental law, in section 31 thereof, provides," and so forth.

—. Do you remember that? A. Yes, sir.

Q. That was true then? A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. I don't know whether you said anything about this or not; I think you have. I will read this and ask you if it is true. I read from the fifth paragraph, page 16, at the end of the paragraph:

"That from said 11th day of September, 1903, down to the organization of the Federal League, on or about the first day of March, 1913, there existed in the United States of America substantially no leagues except those operating as constituent members of organized baseball under and in subordination to the terms of the National Agreement, the rules and regulations of the National Commission

and said National Commission hereinafter more particularly referred to."

627 A. Yes, sir.

Q. That was true, was it not? A. Yes, sir, to the best of my knowledge and belief.

Q. I will ask you if you swore to this, reading from the 7th paragraph:

"That the objects expressed in said The National Agreements are mere pretenses"——

That is about developing ball players, and so forth, in the preamble——

"That the objects expressed in said The National Agreements are mere pretenses, shams, subterfuges and disguises; that the true objects of said The National Agreement were, have ever since the said 11th day of September, 1903, and then and there now are"——

Now follow me closely——

"(*a*) The perpetuation of professional baseball in the hands of the contracting parties, to the end that those engaged in the business of professional baseball within the combination might be safeguarded in the respective localities in which they were doing business against any professional baseball competition therein;

"(*b*) The protection of alleged property rights in the players then or who might subsequently be engaged by any of the contracting parties, to the end, not alone, that they might control the compensation to be paid to such players but likewise that they might so dominate and control such players that the engagement of their services by any person or persons, corporation or corporations who might undertake to engage in the business of baseball without the combination, would be difficult, if not impossible."

A. I remember of that being in there, yes, sir.

628 Q. Did you swear to that? A. I did.

Q. Was it true to the best of your knowledge, information and belief then? A. Yes, sir.

Q. Is there any reason to change your opinion about it since? A. I have not thought about it since, since I got out of baseball.

Q. From that time to the time you began to get out of baseball did you think about it then? Did this organization become weaker or stronger after this bill was filed? A. I could not say.

Q. You could not say that this organization became weaker or stronger after the Federal League under your auspices went out of business? A. After we went out of business I don't know as there was any change in their strength. I do not know whether our organization affected them to that extent or not.

Q. It became stronger when it got you out of business than it was before, just a little bit? A. I don't know, it may have.

Q. What do you think about it? A. I could not express an opinion when I don't know.

Q. You have no opinion about it? A. No, sir.

Q. You had some competition before that, did you not; before you went out of business they had competition through you?

629 A. I presume they figured it competition from some of their remarks.

Q. I am not asking about them; I am asking you, about Mr. Gilmore: Don't you know they had some competition before you went out of business? A. Yes, they did.

Q. And that competition had such backers as Ward and Sinclair and Weeghman and Gilmore, did it not? A. Yes.

Q. And Hanlon? A. Yes, sir.

Q. Do you mean to convey the impression here that you did not think it was a thing of any account at all worth noting? A. I think we were worrying them a little bit but I don't know whether we weakened their organization.

Q. At any rate their organization was as strong after you went out of business as it was as you describe it here? A. I suppose it was, yes, sir.

Q. And kept up the same method of doing business as before; is that right? A. I don't know anything about that.

Q. You know that this National Commission, do you not, was a very powerful body of three men? A. I understand they formulate the laws that govern baseball. That is all I know about it.

Q. When did you find that out? A. I have known it ever since 1914 when I got into the game.

Q. You swore to this, did you not, reading from page 19:

630 "That the National Commission is the chief executive body of said organized baseball and is also the highest legislative body, as to whose law there is no vote and the supreme judicial tribunal from whose decrees there is no appeal; that said National Commission is conducted for profit and derives an income from various sources."

Do you remember that? A. I answered that question a minute ago.

Q. You understood that to be the situation and had something to do with the success or failure of the Federal League? A. What do you mean, that organized baseball had something to do with it?

Q. Yes. A. I think the failure of the Federal League was simply caused by a lack of patronage and the tremendous overhead expense at our parks. We did not worry about organized baseball. I think they probably suffered from a lack of patronage the same as we did, on account of war conditions, and so on.

Q. I will get through asking about some of these things in here, and then I will ask you if you really mean the things you said just now. I go on with this paragraph. Referring to the surplus, the money they got from the World's Series, reading from page 20:

"Said surplus togther with surpluses acquired by the National League and the American League respectively, have heretofore been and are now being used, as the plaintiff is informed and blieves and so charges the facts to be, for the purpose of undertaking to oppress and injure or destroy the plaintiff and its constituent numbers, and for the further purpose of carrying into effect and keep-

631 ing in force said illegal National Agreement."

Did you swear to that? A. I swore to that, didn't I?

Q. Sir? A. I did, yes, sir. Didn't I swear to it? Didn't I sign it.

Q. Do you endorse that statement now, or repudiate it? A. I don't know anything about it right now. At that time I endorsed it.

Q. If you did it was true? A. To the best of my knowledge and belief it was true at that time.

Q. You have no reason to change your opinion about it since? A. I have not even thought about it since.

Q. Are you on pretty good terms with Mr. Johnson and Mr. Herrmann now? A. I never see them. I never talked with Mr. Johnson but twice in my life, not over two or three times, anyway.

Q. Why did you come here yesterday and today to testify? A. I was defendant in the case and I have been reading the newspapers, and Mr. Pepper asked me in New York a week or so ago if I would come down.

Q. You were not compelled to come? A. No, sir, but I felt it my duty to come in view of what I heard was going on down here.

Q. When did you hear it first? A. I read in the paper a week or two ago that Mr. Rasin had been on the stand and testified to certain things that occurred in this meeting.

632 Q. That is the first time you have heard about this case? A. No, I knew that the case—before I went to Florida I understood there was a suit that was liable to come up some time in the near future.

Q. You knew it when it was commenced, did you not? A. I did not.

Q. I mean the suit in Washington here, which was filed September 13, 1917, nearly two years ago. A. I knew about it.

Q. You knew you were made a defendant in this suit, did you not? A. Yes, sir.

Q. Your thought your duty was to come down here and help Mr. Pepper out? A. I am coming here to defend the action of Mr. Sinclair, Mr. Weeghman, and myself.

Q. Why didn't you appear in this case and defend the suit for yourself, or have you ever been served in this case? A. I never have been served, no, sir.

Q. Did you volunteer to come here and defend your good name in this suit? A. Yes, sir.

Q. Have you ever come into this case in any way as a defendant? Have you or not? A. I am mentioned in there as a defendant.

Q. They mention you as defendant, but you never have been served? A. No.

Q. You never filed any answer to these charges against you? A. I never filed any answer, no sir.

633 Q. You did not think it necessary, did you? A. I did not do it.

Q. Is there any reason why you did not do it? A. No.

Q. You don't care to give any reason, and yet you come down here without being compelled to come and testify in behalf of organized baseball. A. I came here to protect the action of Mr. Sinclair, Mr. Weeghman and myself. Organized baseball means

nothing to me, I am not obligated to them in any manner, shape or form, and I am not here at all for them.

Q. Are they not under obligations to you? A. They are not.

Q. Did you mean they are not under obligations to you? A. I said I was not under obligations to them.

Q. I did not mean to intimate that, but I ask you why—if you have any reason to give why you volunteered to come down here and testify, without being compelled to do so, not under any summons, to testify against your old time associates of the Baltimore baseball club in behalf of Mr. Pepper's clients, organized baseball; and yet you are named as defendant in this suit here in Washington, and you would not volunteer to come in and submit yourself to the jurisdiction of the court and defend your own good name. Can you explain it? A. The only way I can explain it is, that I got back from Palm Beach and Mr. Sinclair and I discussed this matter.

634 It was quite apparent that there was testimony being given here that we tried to do the Baltimore club out of something, or to do something underhanded, and I thought it was my duty to come down here and testify, and I was perfectly willing to do it.

Q. Do you think that Mr. Herrmann, Mr. Johnson and Mr. Tener tried to break up the business of the Federal League? A. Do I think they tried to?

Q. Did you think so while the Federal League was alive? A. They probably would have been glad——

Q. You can answer that question, can't you? Did you think when the Federal League was in existence that Johnson, Tener, Herrmann and the rest were trying to break you up? A. They did not do any act that worried me at all.

Q. Can you say yes or no to that question? Can you? If you can't, it is all right. A. I have answered your question to the best of my knowledge.

Q. Suppose you had to say yes or no, would you say yes or no to that question? A. I would say yes.

Q. They did. In what way? A. Well, there were occasional newspaper reports given out regarding the Federal League, that we did not have any ball players, just simply oral statements made. That is the only action——

Q. You did not think that injured you much? A. No.

Q. That is all you recall? A. Right now, yes, sir.

Q. You have forgotten all about this, have you? A. No, sir, I have not forgotten.

Q. I wondered if anybody could refresh your memory so that you could recall that interview of Ban Johnson's in the New

635 York Sun the day before the players landed on the Lusitania from that trip abroad; do you remember that? A. I think Mr. Johnson made a statement to the effect that we did not have any ball parks and we did not have any players, and several other statements.

Q. And a good many things that were not true? A. Most of them were not true.

Q. Why did not you tell me about that just now when I asked you about what he did to injure you? You could not remember it? A. I never thought of it; I recall it now.

Q. Did you swear to this, in the 9th paragraph of this bill:

"Immediately upon the entry of said Federal League into the business of baseball, organized baseball as an entirety and in its constituent membership, and particularly the defendants, Herrmann, Johnson and Tener, conspired and confederated together to injure or destroy the business of the plaintiff and its constituent members?"

That was true, was it not? A. Yes.

Q. But you cannot recall any of the things that they did except what you said? A. They only did it by acts such as I have just related, by interviews in newspapers, and having it printed broadcast.

Q. They did do that, did they not? A. They made those statements, I guess; at least they were printed in the newspapers. I did not go around to investigate them and find out whether they were true or not, or whether Mr. Johnson said this or that or anything else.

636 Q. You charged them with it, did you not? A. Yes, it was in the newspapers.

Q. Did they deny these charges you made against organized baseball? A. Did they deny them?

Q. Yes. A. I don't recall what their answer was.

Q. They never denied the publication in the newspapers to which you refer, did they? A. I don't know.

Q. Did you ever hear of any denials from them? A. No, sir.

Q. Did not you swear to this—I have understood you to say you did not feel any of these things—did you swear to this: "As soon as the plaintiff undertook to become a league of major importance the defendants, or some of them, and their confederates and co-conspirators, or some of them, publicly and privately, from the banquet-board, through the public press, and to individual players, considering the entry into contracts with the constituent members of the plaintiff, knowingly falsely stated that the plaintiff and its constituent members were financially irresponsible, or words to that effect." Did you swear to that? A. Statements that were made in the newspapers, supposed to have been made by certain members, and I swore to it, yes, sir.

Q. When you swore to that it was true? A. Yes, sir.

Q. And you stand by it now? A. Yes, sir.

Q. Do you remember Johnson stating that the Federal
637 League would bust on Decoration Day, then another that it would bust on the Fourth of July, and still another that it would bust before the end of the year? A. I recall that there were many predictions made as to our failure.

Q. You can answer that question? A. I don't know; I do not recall the dates.

Q. I did not ask you about the dates; I asked you about the man, Ban Johnson; did not Ban Johnson make those charges against you? A. It was in the newspapers.

Q. He never denied them so far as you know? A. No.

Q. You talk about the public confidence, and lack of public pa-

tronage. Do you mean to tell this jury you don't think those kin
of attacks, insidious attacks, did not hurt the Federal League? A
I don't think they did; no, sir.

Q. You rather think they helped the Federal League? A. I sa
they did not help it, in my judgment. In the opinion of others i
may have hurt it.

Q. But you don't think it hurt the Federal League? A. No, si

Q. I would like to give you a chance to tell the jury why yo
don't think so. A. I think a good many people considered th
source and just passed it up.

Q. I thought you thought it a pretty good source. I have hear
you say nothing against these gentlemen so far, and you have volun
teered to come down here. Are they not pretty good fellow
638 A. As far as I know, they are. They never have been as
ciates of mine.

Q. What do you mean by "considering the source?" A. Whe
a remark is made by a competitor of an organization, lots of peop
don't give it much thought or consideration.

Q. I will pass from this phase of the matter with this one questio
and I do it more in justice to yourself than myself. If a merchan
in a city is talked about by reputable men, let us say like Mr. Ba
Johnson, if you please, who would say today, "I predict that me
chant will fail by Decoration Day," and then at another time, "H
will fail by the Fourth of July," and another time, "Before th
Christmas Holidays," unless the man who is doing the talking is
crazy man, don't you think it is calculated to hurt that merchant
A. If the remark is made by the general public it might have som
effect, but if made by a competitor I do not think it would hav
much.

Q. Suppose it was published in a newspaper and spread broadcas
throughout the country. Would it not be calculated to do any dam
age? A. It might affect it a little bit.

Q. A litle bit or much? A. A little bit, I said.

Q. It did not affect the patronage of the Federal League, in you
judgment? A. No, sir.

Q. It would not affect that at all? A. No, sir; I don't think i
would.

Q. It would not affect the question of your getting players? A.
don't believe it would, no, as long as we put up the money
639 Q. It depends on how much money you put up and ho
long you put it up, would it not? If you are satisfied, it is a
right. Now I ask you if you swore to this: "That the defendant
or some of them, and their said confederates and co-conspirators, o
some of them, have likewise threatened that any player who is
member of any club in organized baseball who shall contract wit
the plaintiff or its constituent members, shall thereafter be barre
from ever playing in organized baseball; and would likewise be re
strained from playing with the Federal League clubs." Do yo
remember that? Is that true? A. At that time I think it was true
there is no doubt about it.

Q. It remained true until the Federal League went out of busi
ness? A. It think it did.

Q. Do you think this did not hurt you? Was this an organization like a cat with nine lives—you could not kill it? A. No, but we had the money and the energy and the desire to go along, and we went. We did not think about anybody or anything.

Q. Until your feet got cold in December? A. Our feet didn't get cold.

Q. Did you swear to this—let us go on: "That players who have entered into contracts with the plaintiff or any of its constituent members, have by the defendants, or some of them, and their said confederates and co-conspirators, or some of them, been repeatedly and still are called 'contract jumpers,' and the plaintiff char-
640 acterized as an 'outlaw' ". Was that true? A. I often heard them spoken of as contract jumpers, but that did not mean anything; it did not mean that it was so. A man that jumps an invalid contract, where there is no equity in it, I do not think he was a contract jumper.

Q. He was rather a nice fellow, I suppose? A. I don't go through life worrying about remarks that people make if they are not true.

Q. Well, what about this: "That each and every of said false statements and each and every of said threats have been so made and are still being made for the purpose of harrassing and injuring the plaintiff and its constituent members, and for the further purpose of deterring players within the combination of organized baseball from at any time or under any circumstances entering into contracts with the plaintiff or its constituent members and for the further purpose of causing players so in organized baseball if they do enter into contracts with the plaintiff or its constituent members, to demand of the plaintiff and its constituent members for their services, compensation in excess of that which they would demand of and from those engaged in organized baseball and for the further purpose of affecting injuriously the attendance upon the games participated in by the constituent members of the plaintiff; that each and every of such purposes to a greater or less extent have been successful to the substantial and irreparable injury of the plaintiff and each of its constituent members. Did you swear to that? A. I swore to it, yes.

Q. Did you swear to the truth or falsity when you swore
641 to it? A. The truth.

Q. Have not you told this jury, in the presence of his Honor, that you saw no injury that came to this Federal League from organized baseball at all? Did you swear to a falsity when you said that? A. No, sir, I did not.

Q. Upon which occasion did you swear to the truth, and on which one the falsity? A. I have made statements here to the effect that I did not worry about organized baseball and the remarks and statements that were made. When this bill was drawn of course our attendance was very slight, and some of it may have been attributed to that.

Q. You do not say here, "may"; you say it did, and you swear to it, and you go so far as to say here, "That each and every of such purposes to a greater or less extent have been successful to the substantial and irreparable injury of the plaintiff and each of its con-

stituent members." A. Well, they injured us to this extent, they forced us to pay considerable money for ball players, and increased our operating expenses.

Q. Did they not injure you to the extent of driving you out of business? A. I don't think they drove us out of business.

Q. You just went and knocked at their door and broke their door down to get in; is that it? A. No. We were convinced there was not room for a third major league.

Q. That is to say, there was not room in the United States? A. It is a big country.

Q. You wanted room big enough for two United States; is that the kind of room you wanted? A. No.

642

Q. Now you asked the Court to enjoin these people from doing these things, did you not? A. If that is in the bill. I do not have a clear recollection of what is in the bill.

Q. Do you mean to say that if that is in the bill—— A. I say anything that is in that bill to the best of my knowledge and belief was true.

Q. What was this bill filed for? A. Filed to enjoin—filed as a suit against organized ball, for the violation of the Sherman Law.

Q. You first used the word "enjoin," and then took it back. Why did you do it? A. I just made a mistake.

Q. You just accidentally put it exactly right. A. Did I?

Q. Yes. Let me read this, and this is the end of it—near the end of it anyway—this is after the irreparable injury business—it follows after a semi-colon—"that the defendants or some of them and their confederates or co-conspirators, or some of them, threaten to, and the plaintiff fears that they will, unless restrained by this Court, continue to make said false statements and threats, and that said false statements and threats, if continued, will work irreparable damage to the plaintiff and its constituent members, for which there is no

643

adequate remedy at law,' and so forth. Do you remember that? A. Yes, sir.

Q. I think I am about through. You told us, I think you have already told the jury, that you did not have any feeling of trouble about this employing of players, and high prices, and so forth. I will ask you if you swore to this—these are questions of fact: "That said defendants, or some of them, and their confederates and co-conspirators, or some of them, have been endeavoring and will, as the plaintiff fears, continue to endeavor, unless enjoined as hereinafter prayed, to induce by threats, bonuses, persuasion and otherwise, other of the players hereinbefore referred to under contract to the constituent members of the plaintiff to repudiate and refuse to carry out their said contracts with the constituent members". Did you have trouble with them about that? A. I think they were endeavoring to get some of the ball players back, yes, sir.

Q. They got some of them back, too, did they not? A. Two or three, I think.

Q. They filed numerous suits against you for the purpose of worrying you, and suits against players to annoy them and harass them, did they not? A. They filed several suits.

Q. Now, let us get down to this question of this settlement. It won't take me very long, your Honor, to finish that.

By Mr. Douglas:

Q. I will ask you to identify this letter (handing a letter to the witness). A. That is my signature. Do you want me to
644 read it?

Q. No, sir, I will read it—read it over to yourself, of course.

By Mr. Douglas:

Q. While counsel are examining the letter, I wish to ask you one other question bearing on your statement that you did not have any feeling in connection with organized baseball; I will ask you if there were not thirteen or fourteen suits filed, claims or suits, for the return of ball players, by organized baseball against the Federal League? A. I don't exactly remember the number that were filed—probably eight or ten; maybe thirteen.

Q. I will ask you if seven ball players after signing up with the Federal League, as the result of persuasion or intimidation, and so forth, did not jump their contracts and go back to organized baseball? A. Seven?

Q. Yes. A. Walter Johnson did; Killifer did.

Q. Do you remember Ray Caldwell? A. Ray Caldwell?

Q. He did, did he not? A. Yes.

Q. And Perritt? A. Yes, he did.

Q. And O'Connor? A. Patrick O'Connor?

Q. And Wingo; do you remember Wingo? A. I don't believe Wingo ever signed.

Q. Martin Berghammer? A. I don't think he ever signed.

Q. You swore to it on page 31 of your bill. You said:
645 "That Martin Berghammer had entered into an alleged contract with the Cincinnati Exhibition Company for the season of 1914, which said alleged contract contains the regular option to renew, required by the terms of said the National agreement and the rules and regulations of said National Commission; that said contract expired on the 6th day of October 1914; that said Berghammer has entered into a contract with the Exposition Park Association of the City of Pittsburgh, in the State of Pennsylvania, for the years 1915, 1916 and 1917." A. That was true.

Q. What about Wingo? A. I have not a clear recollection that he signed, but if it is in there, he did sign.

Q. What is that? A. If his name is mentioned——

Q. I thought you might recall him. A. No, I do not.

Q. You swore to the same thing in regard to Patrick O'Connor, Berghammer—what about James Austin; do you remember him? A. I remember the player.

Q. He went back under the pressure of organized baseball? A. If it is in there he had signed, and jumped back, it is true.

Q. I will read it to you because if you put it that way I will have

to read it to you: "That James Austin had entered into an alleged contract with the St. Louis American League Baseball Company for the season of 1914, which said alleged contract contained the regular option to renew, required by the terms of said the National Agreement and the rules and regulations of said National Commission; that said contract expired on the 6th day of October,
646 1914; that on said 6th day of October 1914, said option to renew that had not been exercised by said St. Louis American League Baseball Company, that said Austin has entered into a contract with the Exposition Park Association of the City of Pittsburgh, in the State of Pennsylvania, for the year 1915." A. That is true.

Q. He returned to organized baseball, too, did he not? A. Yes, sir.

Q. What about Reuben W. Marquard? Do you remember him? A. He signed with Brooklyn and then went back.

Q. Now let us see that letter, gentlemen. I will ask you if you remember the paragraph of this letter dated October 13, 1915? A. I wrote that letter.

Q. In order to be fair to you, I am asking you about this because of your statement to this jury that in the summer of 1915 you reached the conclusion that the Federal League was doomed, was hopeless and helpless. A. Yes, sir.

Q. And nothing more to be done but sell out; and you said you told Mr. Rasin that, too, but did not tell your friend Hanlon. A. We had many discussions about it at our various meetings.

Q. I will read this letter to you and see if you have anything to say about it. It is dated, gentlemen, October 13, 1915, addressed to Carroll W. Rasin, Union Trust Building, Baltimore:

"DEAR SIR:

"Just returned from several days' trip and find your letter of recent date wherein you make another request for a financial statement of the League. I do not intend to give it to any body
647 because I do not think it is business policy to do so. Any time you are in New York you will be at perfect liberty to look at the books and I will be glad to tell you personally just how things stand"——

"I have just refused requests of similar nature from other members of the Board, consequently cannot grant yours. However, I will be glad to tell you that the Kansas City Club have never yet paid their assessment. I hope you will accept this letter in the spirit in which it is sent. Also hope that your Club is signing up some good talent for the coming year. I have wonderful faith in Baltimore as a Major League city, and know if you can get a fighting team there and keep it in the race, you will draw wonderful crowds and easily pay expenses."

Did you write that last paragraph? A. Yes, sir.

Q. That was after the season of 1915 was over, was it not? A. Yes, sir.

Q. I will give you an opportunity to say anything about it if you care to say it. A. I would simply explain it in this way, that the bluff that we had formulated, the plan we had formulated, to put this thing through, was an absolute secret between Mr. R. B. Ward, Mr. Comstock, Mr. Sinclair and myself. That type of letter I wrote to my associates, feeling that if any settlement was made, if they had good players they could readily get rid of them.

648 Q. You were putting up a bluff on Baltimore? A. Baltimore did not know one thing about the plan we were putting up in New York.

Q. You were President of the Federal League Baseball Club of Indiana? A. Yes, sir.

Q. Mr. Rasin was on the Board of Directors? A. Yes, sir.

Q. The Baltimore club was a constituent member of that club, and a stockholder of that company? A. Yes, sir.

Q. You not only refused to give him any financial statement, although a member of the Board and a stockholder, but you refused to tell him anything about what was going on with reference to these negotiations for settlement? A. There was no negotiation for settlement.

Q. You refused to let him know what was in your mind? A. I did. I did not tell Mr. Weeghman, Mr. Ball, Mr. Robinson or——

Q. But you advised him to go ahead and get ready for the season of 1916? A. I advised him to get what good players he could yes, sir.

Q. And you handed this compliment to him that you had good faith in Baltimore as a Major League city? A. If we had had eight cities like Baltimore we could have made a success of it.

Q. And you said that "if you can get a fighting team there and keep it in the race you will draw wonderful crowds and easily

649 pay expenses." Did you say that? A. Yes, sir.

Q. Did you mean it? A. Yes, sir.

Q. I will read to you this telegram and ask you what you have to say about it. It is sent to the Baltimore Federal Baseball Club:

"I want your new franchise accepted and sent to headquarters. Advise me when same will be taken care of. Large crowd Newark at popular prices. Will be winner."

Were you really trying to deceive Baltimore? A. What is the date of that?

Q. August 15, 1915, two months after you say the Federal League was doomed. A. I said that along about the first of July, my opinion was that we were fighting a hopeless task. There were two clubs that had practically given up the fight, Kansas City and Buffalo. I had already received an opinion from the other members of the organization that they would not continue with six clubs, and for that reason we formulated this plan to put over this bluff, but we decided to keep it a secret from everybody. Mr. Weeghman knew nothing about it. Mr. Ball of St. Louis knew nothing about it.

Q. You felt justified in sending that telegram of deception to the Baltimore club, did you not? A. That was in reference to the new franchise agreements. It seems when the by-laws of the Federal

League were formed they were not stable, not sound or anything, and during the middle of the season of 1915 we revised our by-laws and franchises.

Q. Were you prepared for death when you sent this tele-
650 gram? A. Was I prepared? We were preparing for death.

Q. It looks to me like you were prepared to go on. You said you wanted a new franchise accepted and sent on to headquarters. What did you mean by that? A. We wanted a new franchise because the old franchise was so framed and so drawn it required several votes in order to forfeit a franchise or to do anything. For that reason our attorneys in 1915, along about July or August, changed our by-laws and revised the franchise, and each club member agreed to exchange the old one for a new one.

Q. What for, pray? A. What for?

Q. What were you doing this for, if you thought this thing was dead, was helpless and doomed? A. I told you in my opinion I did not see any chance of operating the following year.

Q. You did not say that; you did not say in your opinion; you said there was not any chance. A. Well, there was not any chance that I could see.

Q. I do not care to pursue it any further. I will give you one more chance to explain to the jury why you wanted Mr. Rasin to send you back a franchise they had in exchange for a new franchise? A. All we granted was for them to send back the old franchise and accept a new one.

Q. But you were not going on, were you? A. I don't know.

Q. You knew you had no idea of it. A. I did not feel that we were——

651 Q. You had no idea you were going on. A. Nevertheless I wanted these papers in.

Q. All right. Is not this the real explanation, if you will pardon me what reflection may be in it, that you wanted to get these franchises in to change them so they could be more easily declared forfeited? A. No, the new franchise had been already forwarded.

Q. Forfeited? A. Forwarded.

Q. You could not forfeit that old franchise unless the Baltimore club had failed in doing its duty? A. No, we could not forfeit any unless they failed to carry out their obligations.

Q. Did not you correct your testimony in direct by saying the stock you said had been issued to individuals, was issued to the corporation? A. Yes.

Q. I am very much interested about this stadium you built up in the air in New York. What did you do it for? A. In an effort to force organized baseball to make some kind of a settlement and take care of our individual units and our members, and reimburse us to as great an extent as possible.

Q. You had statements and interviews in the papers about it? A. Yes, sir.

Q. You said you were going to build it? A. Yes, sir.

Q. And you had no idea of building it? A. None at all. We

did not know where the money was coming from unless some angel came along.

Q. You mean some devil; you were not associating with
652 angels. Do you mean to tell this jury that you gave out interviews to the papers that you were going to build this stadium, employed an architect and manifested all of the different things that were necessary to accompany a real good faith act, and had no idea of building a stadium at all? A. It was one big bluff.

Q. That is the word you used for it? A. Bluff, yes, sir.

Q. Might you not also characterize it as false pretense? A. I do not know what you characterize it.

Q. Were you not engaging in false pretense? A. We were trying to be protected to the best of our ability.

Q. Did not you get that contract out of organized baseball, Mr. Gilmore, under false and fraudulent pretenses? A. No, sir. They never asked us if we were going to build in New York?

Q. You made those statements—— A. We made those statements for effect.

Q. For effect on whom? A. On organized baseball.

Q. You made it for them to read and to hear about it? A. I presume they read it.

Q. Did you think that was an honest transaction on your part? A. I do.

Q. That is in accordance with your standard, is that it? A. I think it was all right.

Q. Your real purpose was to get organized baseball to buy you out? A. To reimburse us for some of our expenditures, yes, sir.

653 Q. To buy you out. Did not they have enough ball parks for the American and National Leagues at that time? A. I presume they did.

Q. You expected them to buy you out and get rid of you as an annoying competitor; is that the proposition? A. I think so, yes, sir.

Q. You knew that they did not intend to keep the Federal League as an entity? A. I did not expect them to, no, sir.

Q. You expected them to do what they did do, to dismantle in large part the plants that you had built up at such expense? A. I don't know that they have dismantled any plants yet.

Q. You do know that the splendid Brooklyn plant built by your splendid friend, Mr. Ward, was dismantled in the sense it became a storage plant? A. I never knew that until day before yesterday.

Q. And you know that the Newark club park of your friend Sinclair is only used for other purposes than professional baseball; you knew that? A. I did not know what they had done about it.

Q. You knew this, did you not, that your intimate friend Mr. Weegham got $50,000 for his part of the settlement, and that he was to get a National League franchise in Chicago? A. I know there was a price named of $500,000 for National League franchises, and the National and American Leagues were to pay $50,000——

Q. And he was to step into the shoes of the National League people at Chicago? A. That gave him the opportunity to use his ball park on the North Side.

654 Q. And Mr. Ball of St. Louis was to make a similar deal with the American League? A. That was no part of the peace pact.

Q. That was one of the results of the peace pact. A. That happened subsequently.

Q. And $50,000 was to be paid in St. Louis on account of the purchase—— A. No, sir, not St. Louis; at Chicago.

Q. Was that meeting in New York on the 13th only a casual, accidental meeting? A. The meeting on the 13th?

Q. Yes, when you made that tentative agreement. A. I have described how it occurred.

Q. I ask you the question again. A. It was not prearranged, no sir. It was just a telephone call from President Tener's office to my office in New York.

Q. Was Sinclair a party to that bluff of yours about the stadium? A. Yes, sir.

Q. Was Weeghman? A. No, sir.

Q. Was Ward? A. R. B. Ward?

Q. You did not tell Baltimore anything about it? A. No, sir.

Q. Then you sat down around a table and you made a deal with these people by which the Federal League was to be dissolved and go out of existence in consideration of the payment to these various people who were interested in sums aggregating around a

655 million dollars, did you not? A. About that figure, yes sir.

Q. And you took care of Weeghman, and you took care of Ball? A. No, sir, we did not.

Q. You took care of Ball, did you not? A. No, sir.

Q. Well, you took care of Weeghman—I mean in the ultimate agreement; I am not talking necessarily about this tentative agreement. You took care of all these people except Baltimore? A. No, we did not. We did not take care of St. Louis. Buffalo and Baltimore would have been taken care of had they shown——

Q. By putting the Federal League out of existence you were making it impossible for Baltimore or anybody else that was left out of the agreement to do business at the old stand at all, were you not? A. We took care of the serious problems at the start, and the others could have been taken care of if there had been a disposition on the part of the Baltimore club to have a representative there, with the other clubs.

Q. You took care of the men who did not need to be taken care of; you took care of the rich ones, did you not? A. I would not say that.

Q. You took care of Mr. Ward? A. Ward was taken care of, and probably got back half his loss.

Q. You took care of Weeghman? A. An arrangement was made whereby Weeghman lost a good many more thousand dollars, taking it over.

Q. He got into this delightful company. A. He was an associate.

656 Q. But ultimately your friend Sinclair, who was a fairly rich man, got taken care of. A. He was taken care of at the meeting on the 22nd day of December.

Q. All as a result of the start, of the tentative agreement? A. Yes, sir.

Q. Then you finally made an arrangement with the Baltimore club to have its rights submitted to the tender mercies of a committee of seven? A. Only because——

Q. One minute; just wait until I get through—a committee of seven, and how much of anything, whether fifteen cents or fifteen thousand dollars Baltimore would get, was to be left to the vote of a majority of that committee, and that committee was to have been composed of Ban Johnson, Herrmann and Tener, the three members of the National Commission, and Barrow, the president of the International League club at Buffalo, who was already himself in organized baseball; that made four out of seven, did it not? Is that right? Can you answer that question? Let us get that straight. A. Yes, sir.

Q. And the other three members were to be yourself—— A. Yes, sir.

Q. Whatever you might see proper to do for Baltimore with your one vote, and then from Buffalo, and then some other man from the Baltimore club that you might name, not even one selected by the club; is that right? A. No, I don't think I was to name the representative.

Q. All you have to do is to get the paper; it so provides.

657 A. If that is the case, that is so.

Q. But you advised Baltimore to accept that proposition? A. I did not. Later on after they refused to accept every other proposition that was put up to them.

Q. Did you advise them ultimately to accept that proposition? A. I advised them to have Mr. Rasin, I believe, come to the meeting to talk over these matters.

Q. Mr. Gilmore, you knew, did you not, when you had gotten hold of Mr. Rasin and had a talk with Mr. Janney, that whenever that committee would meet that they could settle or determine by a vote of four to three whether or not Baltimore would get one dollar or one hundred dollars or one thousand dollars or nothing; you knew that, did you not? A. I knew that organized baseball had shown their sincerity by their action in the other deals which they had obligated themselves to do.

Q. What other rights were settled by that so-called committee? A. The last committee?

Q. Yes? A. None.

Q. That committee was provided especially for Baltimore? A. Baltimore and Buffalo. Buffalo had forfeited their franchise, and was not entitled to anything. Mr. Robinson, the president of the club, knew it and appreciated it, and said that anything they elected to do was perfectly satisfactory.

Q. Is there any reason that you know of, that you can suggest, why Baltimore should be treated in that fashion, and Buf-
658 falo? A. Baltimore had an opportunity to receive more in comparison with their investment than Pittsburgh or Chicago or any other club received.

Q. That is as clear as mud to me. I don't understand what you mean. A. Baltimore's representatives absolutely refused to accept $75,000 over the telephone for the their ball park, and that is considerably more than Weeghman accepted; it is more than Gwyner accepted; it is more than Buffalo got, and more than anybody else got.

Q. Pittsburgh got $50,000 and the ball park? A. They had no ball park and their losses were considerable.

Q. And so was Baltimore's. A. No, Pittsburgh's losses were considerable—treble what Baltimore's was.

Q. We won't undertake a comparison then, but we will accept the fact which I understand you to admit, that the machinery, that the commission or committee of four to three was devised, created, only for the exigency of forcing Buffalo and Baltimore to come into the compact; is not that true? A. That is what the committee was to act for.

Q. Mr. Gilmore, you knew when you were president of this club, did you not, that the Federal League organization of Indianapolis did not have the power legally or morally or in any other way to dissolve all the other corporations and put them out of business—did you not? A. The majority vote of our entire board of managers gave us the right to do anything.

Q. Will you mind telling us what you based it on. A. What I based it on?

659 Q. Yes. A. Our by-laws were amended and drawn up by reputable attorneys, and I presume they were all right.

Q. I dare say, but I wish you would tell me what section of those by-laws, gave you the extraordinary power—just listen, the extraordinary power of closing the doors, of destroying Buffalo and Baltimore and all the other clubs ending the life of the Federal League, without even consulting the directors or stockholders of these constituent clubs who had all this money invested in their local organization. A. We simply consulted and relied upon the judgment and opinion expressed by the individual representatives of these separate units who were members of our board of managers.

Q. Did you ever have a meeting of the Federal League clubs of professional baseball ever formally or informally called for the purpose of discussing seriously the dissolving of the Federal League? A. We did not.

Q. The only notice you ever gave Rasin was a telegram in which you asked him to come to New York on the midnight train on important business? A. The same telegram that I sent to all the other members.

Q. He did not know what you were bringing him there for, did he? A. No, sir.

Q. You had already signed the death warrant of the Federal League, had you not, before you ever notified Rasin to come to New

York for the purpose of ratifying its death; is not that true? A. It is not true.

Q. I will see whether it is. You signed this tentative agree-
660 ment on the 13th day of December? A. Yes, sir.

The Court: What day?
Mr. Douglas: The 13th day of December.
The Court: I thought you said the 30th day of December.

By Mr. Douglas:

Q. And you summoned Rasin to New York by a telegram you sent out of New York on the 16th, did you not? A. I do not recall the date, the 15th or 16th.

The Court: The record showed it to be the 16th.

By Mr. Douglas:

Q. And you did not pretend to have any meeting of the Federal League board of managers until the morning of the 17th; is that right? A. That is right.

Q. You claim that after that meeting—I will not characterize it now—that they just agreed to put the Federal League out of existence; is that right? A. The matter was discussed thoroughly and the committee was appointed upon a resolution by the president of the Baltimore club to go over there and act with full power and authority to act.

Q. You say discussed it thoroughly. Do you mean to say discussed it quietly? A. I said thoroughly.

Q. You said heatedly, too. A. I did not say heatedly.

Q. You said heatedly on your direct. A. Did I?

Q. Yes. Was there any heated discussion? A. There
661 were not any fights; there may have been a few loud exclamations and remarks.

Q. There may have been some reference to the round robin of December 13th. A. There was considerable discussion about that.

Q. Do you think it was a square deal for you as president of the Federal League clubs organization, the Central Organization, the trustee for all the clubs under contract, to make schedules and to keep it as a going concern, for you behind their backs without ever consulting a single member of the board of directors, without ever having any called meeting, to sign a paper that would inevitably kill the Federal League? A. I think if you knew the conditions.

Q. You may tell them if you will. A. I have told the jury everything. If they knew the condition and how quick we had to act in order to do something, and approval being given by every member of the board of managers of the Federal League, that it was absolutely square, open and above board.

Q. You did not have time by wire nor by phone to consult with Mr. Hanlon, who knew more about baseball than you, and who doubtless or perhaps may have had more money in this enterprise

than you—did you have any money in this thing? A. I had $15,000 in the Chicago club; I guess he did not have that much.

Q. You don't know how much money he had in this club, do you? A. No. But you made the remark he had more than I did.

Q. I said perhaps; I don't know. He knew something about baseball. A. His reputation was that.

662 Q. You did not consult him about it or give him a chance to say one word on this subject. A. I think if you refer to my telegram you will see I request Mr. Rasin to bring Mr. Hanlon over there?

Q. He could not get there until four days after the tentative agreement had been signed. A. We called the meeting for the 17th.

Q. It had already been signed. A. The tentative agreement had been signed.

Q. I will just follow that up a minute. You say you had $15,000 in the Chicago club? A. Yes, sir.

Q. You were in with Weeghman then? A. I was an associate of Weeghman. I put in the money, and I put the money in before the 1914 season started, and about $5,000 in after it started.

Q. You are in it now? A. No, sir. I sold my stock before the consolidation, before they took over the Chicago National League club.

Q. How much did you get for it? A. Par.

Q. $15,000? A. Yes, sir. It is worth about thirty cents now.

Q. That is another thing you don't worry about? A. I did not worry about it at that time.

Q. There is no reason why you should worry about it if you got par, and the other fellows thirty cents. A. They did not sell out quick enough.

Q. At this meeting in New York at the Biltmore that you call the meeting of the board of managers of the Indianapolis club, the

663 Central Organization, when did you first conceive the thought that that was a formal meeting of the board of managers? A. We had held many meetings in that manner, by calling the men together on telegraphic request.

Q. You had this meeting and acted as president and secretary? A. As chairman, and made a pencil memorandum of the meeting.

Q. The Baltimore people complained bitterly about this whole business at that time, Mr. Janney, Mr. Hanlon and Mr. Rasin? A. Complained bitterly about what?

Q. This agreement you had made on the 13th? A. They were very anxious to know what they were to get out of it.

Q. I will ask you this: Did you mean to tell the jury that Mr. Rasin made this proposition to name a committee composed of yourself and Sinclair and Weeghman to attend that meeting of organized baseball down at the Waldorf and they should have full power and authority to do as they pleased with Baltimore? A. I mean to say that Mr. Rasin made a resolution to the effect that I as president, Mr. Sinclair, and the president to name a third party, to be a committee of three to go over and consult with organized baseball and have power there to act.

Q. Was there any reason that you could then imagine or can now imagine why when Baltimore and Buffalo were the only ones whose status had not been fixed and determined why nobody from Baltimore was put on that committee? A. Mr. Sinclair offered to retire in favor of Mr. Rasin.

664 Q. And Mr. Rasin declined to do it? A. Yes, sir.

Q. There was no contention there at that meeting as I understand it, Mr. Gilmore, that anybody was present with authority to act for the Baltimore Club; the committee had only authority to act for the Federal League in accordance with the so-called meeting held at the Biltmore. A. We considered Mr. Rasin as the member from Baltimore who had full authority.

Q. Did you consider at that time that Mr. Rasin had authority to act for the Baltimore club in making any statement that might be made? A. He had always acted for the Baltimore club at previous meetings.

Q. You mean at this meeting at the Waldorf? A. At every meeting we ever had.

Q. Did Mr. Rasin ever represent at the meeting at the Waldorf that he had authority to act for the Baltimore club in making that statement? A. I never asked him the question.

Q. And he never said so, did he? A. I never asked him the question.

Q. And he never said so? A. No.

Q. Did anybody say that anybody had authority to act for Baltimore there, for the Baltimore club? A. I don't believe they did.

Q. They did not? A. No.

665 Q. You are only claiming you could do what you could do for the Federal League? A. I am only claiming that the board of managers had authority to do whatever they deemed advisable and best.

Q. Did not you admit at that meeting, or subsequent to the meeting, within a week or ten days, that no one had any authority to act for Baltimore? A. Did not I admit that?

Q. Did not you say so here? A. No, not that I know of.

Q. Did not you say so in letters? A. No, not that I know of.

Q. Let us get them. We have the letters. They are in the deposition of Mr. Janney. We will try and locate them, and while they are looking them up, I will ask you to tell me—I have not been able to find it out—who sold the various players in the Federal League after this so-called peace pact, and who got the money for them? A. That was a matter up to the individual clubs with which I had nothing to do.

Q. You don't know anything about it? A. I know of a few sales that were made.

Q. Did Mr. Sinclair sell any? A. Mr. Sinclair sold some.

Q. How many? A. I could not say offhand.

Q. About how many did he sell? A. Six or seven probably.

Q. How much did he get for them? A. I could not tell you that.

Q. You have some idea, have you not? Did not he get over

666 $100,000? A. Oh, no; I think around fifty or sixty thousand.
Q. Did you sell any? A. No, sir.
Q. Did Mr. Weeghman sell any? A. I don't know whether he did or not.
Q. Did not you write letters to Mr. Rasin and Mr. Janney and others in Baltimore stating that you knew all the while that nobody had any authority to represent Baltimore in these negotiations? A. I cannot recall that I did. I think I wrote the Baltimore club and asked them who they wanted to delegate to attend this committee meeting?
Q. At Cincinnati? A. To settle the Buffalo and Baltimore situation.

667 On re-direct examination the witness was asked if any suits by Organized Baseball were to restrain players from playing with Federal League clubs where there was no charge against them except that they had violated the reservation, whereupon witness referred to the Chase case, which he thought was a case in which Organized Baseball attempted to restrain Chase from playing with the Buffalo club. Thinks it was for jumping the contract, but is not clear about that. Witness cannot think of any cases where Organized Baseball ever attempted to interfere with any player who was subject to nothing more than the reserve clause.

The witness further testified that Mr. R. B. Ward had purchased complete minor league in New England and was operating it in the endeavor to make an arrangement whereby the Federal League might transfer their players back and forth. This was the Colonial league, and its purpose was to develop players for the Federal League.

The defenadants then called as a witness in their behalf WILLIAM B. WARD, who being first duly sworn testified on direct examination as follows:

That he resides in Buffalo, New York, and is a bread manufacturer. Is one of the sons of R. B. Ward, who died in October, 1915. After his father's death was elected president of the Brooklyn Federal League Club and became a member of the Board of Managers of the Federal League in virtue of his office, which office he had assumed by December, 1915.

On December 17, 1915, was at meeting of the Board of Managers of Federal League at Biltmore Hotel, at which was present also Mr.

668 Rasin, president of plaintiff club. Six clubs of the Federal League were then active. Others present at the meeting were Sinclair, Weeghman, Gilmore, Comstock, Hanlon, Janney, the latter two from Baltimore. Had received telegram the day previous that a very important meeting would be held in New York and to come on. Ball, who represented St. Louis, was not at the meeting, but was represented by Sinclair. The Kansas City Club, which had gone by the board, was also represented by Sinclair, and Buffalo, which was in the same position, was represented by witness. Understands that Sinclair and witness' father advanced $50,000 to Buffalo and Kansas City clubs, and took over their franchise or whatever assets they had. This advance was made to pay debts, ball players'

salaries, etc. Whatever there was in the way of a Buffalo club had been assigned to Ward and Sinclair jointly, as well as the Kansas City club. The meeting referred to above was called to order by Gilmore. At the meeting Gilmore presented the tentative agreement about which there was a lot of discussion. Rasin suggested that Gilmore appoint a committee of three to attend the Waldorf meeting of Organized Baseball, and then to come back to the Federal League meeting. Sinclair refused to serve unless the committee was given full power to act, and accept or reject any proposition that came up at that meeting in the evening. Rasin made a motion that a committee of three be appointed by Gilmore, consisting of Gilmore, Sinclair, and Gilmore to appoint the third member, with full power to accept or reject any proposition that came up at that meeting. Witness did not attend the meeting, and confines his testimony to what occurred at the Biltmore meeting. Rasin's motions prevailed and Gilmore appointed the committee of three, consisting of himself, Sinclair and Weeghman, and Rasin was invited to attend that meeting with the committee. Understands that Rasin accepted
669 Gilmore's invitation to attend the meeting. The agreement which was discussed at the meeting at the Biltmore was the tentative agreement of December 13th. Witness does not recall whether it covered the interests of the Buffalo Club.

On cross examination the witness testified that he was elected to the Board of Directors of the Federal League shortly before December 17th. Had never before attended meeting- of that Board. Sinclair was there, representing the Newark Club. Assumes that members of Board of Directors were regularly elected; and did not understand that one man served today and another tomorrow. Supposes there have been corporations so loosely conducted that one man could say "I represent a certain club," which representation would be taken as his credentials. Does not know of any off-hand; has heard of some. Ball, of St. Louis, was a member of the Board. Sinclair said he had been given authority to act for Ball of the St. Louis Club. He did not show any written authority or any telegram, but he had two votes in the meeting. The meeting was regularly called by Mr. Gilmore, by telegram to witness, which stated an important meeting was to be held, but did not state the purpose. Knew of the tentative agreement in a round-about way through his uncle, George S. Ward, who had been vice-president of the Brooklyn club, and heard through him that the arrangement had been made to pay witness' father's estate $400,000 in the settlement of the Brooklyn Club matter. This was satisfactory to witness and to his uncle. Witness's interests were not submitted to the committee of four to three that was afterwards suggested for the Baltimore Club; it was a matter of negotiation and agreement which was the best that could
670 be gotten for Brooklyn, and which was better than getting nothing like Baltimore did. Witness had two votes in the meeting. The executors of the R. B. Ward estate gave him authority to act for Buffalo. Buffalo and Kansas City belonged to witness' father, and Sinclair. The Buffalo club was a corporation. It did not elect him to serve on this Board. W. E. Robertson was president of

the Buffalo Club and he was present at the meeting at the Biltmore; he had no interest. Cannot recall that the meeting was a heated one; all gentlemen there took part, including Mr. Janney and Mr. Hanlon. Witness did not complain that Baltimore had been treated rawly, and does not recall that anyone else did. Some protest was made by the Baltimore representatives who were there,—they were there to get what they could for the Baltimore Club. They objected to what had been done. Rasin made the motion to have Gilmore appoint the committee with power to act, and Gilmore appointed himself, Sinclair and Weeghman. Sinclair wanted Rasin to take his place, but he would not do so. It was Baltimore's fault that they were not represented on the committee; they had a chance, and Rasin was invited to be present. Witness did not attend the meeting.

On re-direct examination the witness was asked what relation the money paid the Ward estate bore to its losses in the Federal League venture, and he replied that the Brooklyn Club was to receive ten thousand a year each from the American and National Leagues for twenty years, at no interest. The losses of the Brooklyn club were considerably over $800,000. Witness has already testified that the Buffalo and Kansas City Clubs were indebted for $50,000 jointly to Sinclair and witness' Father, in addition to the Brooklyn club's losses. He does not recall any other club indebted to his father's estate.

671 The defendants thereupon called as a witness in their behalf CORRY B. COMSTOCK, who being first duly sworn testified on direct examination as follows: That he lives in New York, and his business is that of engineer and architect; that he was vice-president of the Pittsburgh Federal League Club during 1915, and a director in 1914 and 1915. He first became interested in the Federal League proposition in February, 1914, as a stockholder of the Pittsburgh Club. It was brought to his attention through Mr. R. B. Ward, whom he had known for a number of years previously. During 1915 witness was in touch with the Federal League practically every day, and during that time was in conference with Mr. R. B. Ward and Mr. Sinclair and Mr. Gilmore, usually at the Biltmore hotel, and subsequently at the League's offices in New York City. He attended meetings of the Board of Managers of Federal League frequently while he was vice-president of Pittsburgh club. Was made vice-president for that purpose, so that in case Mr. Gwyner, the president of the club, was unable to attend the witness could. Was fairly regular in attendance, and these meetings were held from time to time during 1915. They were called frequently by telephone or telegraph.

The witness further testified that weaknesses developed in various clubs of the Federal League in 1915, after about June; that a number of the clubs notified Gilmore from time to time that they were unable to raise any more money, and a number of times it was taken up with R. B. Ward, Sinclair, Gwyner, and witness, and money was raised through various means to help the clubs along until at least the season was completed. The Kansas City Club was exceptionally weak; Buffalo was practically in the same condition—they were un-

able to raise money. St. Louis was weak. Money was
672 loaned to St. Louis by witness in August. R. B. Ward, Sinclair, Gwyner and witness loaned money to the St. Louis club during the season of 1915. From June, 1915, attendance seemed to be getting less and less each week, and receipts were so small that club owners everywhere were getting discouraged, including Pittsburgh. The Federal League kept tab on attendance. Gwyner and witness were required to put up approximately $10,000 per month to meet payroll and other expenses of the Pittsburgh Club, which was over and above gate receipts. Did this during two seasons, "and we were through at the end of 1915." Gwyner was through during the spring of 1914, but witness succeeded in getting him to agree to continue to the end of 1914, when witness again induced him to try it another year. Both concluded at the end of 1915 that they were through. Gwyner was a man of means, and witness told him that he could not well desert his friends at that time, that he could afford to go as long as they did, and should go. Toward the end of 1915 the leaders of the Federal League concluded the only thing to do was to bluff Organized Baseball into some kind of a compromise. These leaders were Gilmore, Ward, Sinclair and witness. This suggestion of policy was not communicated to others of the Federal League, because they were fearful the plan would be exposed and their efforts defeated. In pursuance of the plan, they employed a real estate man to take options on property in New York City, which were obtained, but were for only a short time as they were not paid for. Witness succeeded in closing the streets. He prepared set of plans for grandstand, and when they were completed options were just about to expire. This was about six weeks after the scheme had been conceived. In order to do anything had to do it quick, because no money was available. Were awaiting word from Organized
673 Baseball, and it was received by telephone communication from one of its representatives. Does not know how this came about. Shortly after this telephone communication, Gilmore phoned and asked witness to come to the baseball office. Then Sinclair arrived and they told him what had occurred the night before—about the tentative plan. Did not know of the agreement of December 13th until after it had been reached—about the following day. Told them it was satisfactory as far as Pittsburgh was concerned. Then communicated the information to Gwyner, who had come on to New York in the meantime. Had no meeting of the stockholders or directors of the Pittsburgh club, and Gwyner and witness undertook to decide the matter for Pittsburgh. Then the meeting at the Biltmore of December 17th occurred. This meeting of the 17th was held by notice from Gilmore. It was a meeting of the Board of Managers of the Federal League, and there were present Gilmore, Sinclair, Weeghman, Robertson, Ward, Rasin, Hanlon, Janney and witness. After the meeting was called to order the tentative agreement was discussed. Mr. Janney, of Baltimore, did the talking for Baltimore and said that all Baltimore wanted was a major league franchise, that they were not particularly interested in the settlement, except that Baltimore wanted a major league franchise. The Balti-

more representatives were advised that the members could not tell them anything about what sort of a settlement could be made along that line, and after considerable discussion, the motion was made to appoint a committee to confer with representatives of Organized Baseball. Rasin made this motion. Sinclair objected to going into any conference unless the committee had authority to act and conclude any arrangement that they might think desirable or satisfactory.

Sinclair also agreed to allow anyone to take his place and rep-
674 resent the Federal League at this meeting, stating that he would prefer someone else would take the burden instead of himself. Later Rasin moved that a committee be appointed with full authority to act and conclude an arrangement with the representatives of Organized Baseball, and such a committee was appointed, consisting of Gilmore, Sinclair and Weeghman. Gilmore then invited Rasin to go with the committee; and the party then left for the Waldorf.

On cross examination the witness testified that Janney and Hanlon took part in the meeting at the Biltmore; that he does not think Janney and Hanlon had authority to vote on the resolution that Rasin made for the appointment of the committee. At that meeting witness was present as a member of the Board of Managers. Gwyner was the regular representative, and witness served under proxy with authority from Gwyner. He does not know that a director cannot send a substitute, but does know that his actions in representing the Pittsburgh club were ratified by its Board of Directors in every case. Does not know whether it was proper or not. Gilmore told witness the purposes of the meeting. Gilmore's telegram was sent to the Pittsburgh club, and was received by Gwyner, who was unable to attend the meeting. The real purpose of the meeting was to make some compromise with Organized Baseball. The compromise of December 13 was a tentative one, taking in several clubs, including Chicago, St. Louis, Pittsburgh, Brooklyn and Newark. He does not know that these were all rich men's clubs. There wasn't much money around some of them. Gwyner is quite a rich man, and Sinclair had a dollar or two. Does not know about Weeghman. Ball is supposed to have plenty of money. The Pittsburgh club was to get $50,000, and it was to turn over to Organized Baseball the lease of

the park. Organized Baseball was to pay the rent of the park
675 which had been leased from the Baltimore & Ohio Railroad. The lease had one year to run. They turned over to Organized Baseball a liability instead of an asset. Is not sure whether the rent was paid by Organized Baseball, but thinks Pittsburgh paid the following year's rent. Thinks Gwyner advanced rent for 1916, in the spring of that year, and did not get it back from Organized Baseball. They turned over nothing to Organized Baseball for the $50,000. Witness does not know whether the park was ever intended to be used by Organized Baseball. It has not been so far. Pittsburgh Club never built the stands. We spent $40,000 on the stands when they started, putting it in condition, but they were owned by the Baltimore & Ohio Railroad, which did not build them. Does not

know the purpose for which Organized Baseball bought the club. Were glad to get the money. That is all they were interested in. Witness and Gwyner were through and did not intend to go any further, and reached this determination about June, 1915. The purpose of the bluff was to sell out to Organized Baseball. The idea was to induce them to buy out the Federal League and get rid of the annoyance and competition. The bluff was to put up a great stadium and have a great club in New York City. They did not have in mind frightening Organized Baseball so that they would buy them off to get rid of the competition that was coming and that existed. "What we were trying to do was to stop our losses and have the baseball players taken."

Plaintiff's counsel then asked what inducement was in witness' mind whereby he hoped to induce Organized Baseball to buy him out—what reason witness had to make him believe that by putting up this bluff witness could induce Organized Baseball to buy him out, to which question counsel for defendants objected, which
676 objection was by the court overruled and an exception noted.

In answer the witness stated that the reason was the same as in any other business; that they would give Organized Baseball additional competition if they went into New York City.

The witness further testified that he did not hope Organized Baseball would buy them out to eliminate competition. Was not interested in that. Witness was in hopes they would buy them out and stop their losses. Did not know what they had in mind and did not care.

Q. You went into this enterprise, the Federal League, in good faith, did you? A. I went into it very blind.

Q. I did not ask you how much sight you had or how much sense you had; I asked you how much good faith you had. Do you understand the question. A. Yes, sir. I had very little, because I had very little confidence in the proposition.

Q. Did you have any confidence in your character? A. Yes, sir, lots of it.

Q. Then you went into it in good faith? A. I did so far as I knew about the proposition but I had very little confidence in it, so I could not have very much good faith in it.

Q. You are an intelligent man, Mr. Comstock, and I am sure you understand my question? A. Yes, sir.

Q. I did not ask you how much good sense you had. I am not asking you about your mental sense. I am asking you
677 about your moral sense. A. Yes, sir.

Q. Did you go into this thing for the purpose of creating a hold-up and to force organized baseball to pay you money because you were in the way, or did you go into it for the purpose of honestly and intelligently and sanely conducting major league baseball?

The Court: You are speaking of his going in at the beginning?
Mr. Douglas: Yes, sir.

The Witness: I will explain it in this way——
The Court: That is not an answer to the question.

By Mr. Douglas:

Q. Did you go into it in the beginning with an honest purpose of helping to develop a third league, a major league? A. No, sir.
Q. You are content to leave the answer that way? A. Yes, sir.
Q. You went into it in bad faith? A. Yes, sir. A. I had no confidence in the game from the beginning.
Q. You had no confidence in the game from the beginning? A. No, sir.
Q. All right, sir. Did you induce anybody to put money in this thing? A. I induced Mr. Gwyner.
Q. Mr. Gwyner? A. Yes, sir.
Q. Did you tell him that you wanted him to go into it in bad faith? A. I told him that I wanted him to consider it be-
678 cause Mr. Ward had asked me if I would not consider it.
Q. Consider what? A. Going into Pittsburgh.
Q. Do you mean to charge that Mr. Ward went into this thing as a hold-up? A. No, sir.
Q. Did you? A. No, sir.
Q. It is very clear, I imagine, to you, but surely to nobody else. What do you mean by saying in one moment you did not go in for a hold-up and the next moment you say you did. A. I don't think I have said I went into it for a hold-up.
Q. You went into it honestly, did you not? A. Yes, sir, but with very little faith.
Q. You mean very little confidence? A. Yes, sir.
Q. Very little confidence in its ultimate success? A. Very little confidence in its ultimate success or faith in the game.
Q. But you did not go into it with any dishonest purpose? A. No, sir.
Q. I am glad you have corrected yourself. Therefore you went into it—I used good faith—I thought everybody understood that expression—I used good faith in the sense that you went into it with no improper motive. A. No, sir.
Q. Or no dishonest motive? A. No sir.
679 Q. For the purpose of aiding as far as you could in making the league a success? A. I went into it in good faith——
Q. Will you answer my question. Did you go into it to do all you could, as far as you could, to contribute to the success of the league? A. Yes, sir.

Mr. Pepper: Now may he have an opportunity to explain?
The Court: Certainly. I think it is very plain, if I may be allowed to make a suggestion that the witness is using the word "faith" in the sense of "confidence."
Mr. Douglas: Yes, but I think he has explained it.
Mr. Pepper: I think he ought to be given the opportunity to make whatever explanation he wishes.

Mr. Douglas: He can have all the opportunity to say anything he desires.

Mr. Marbury: I think he had made it very plain.

The Court: He should be the judge of that.

The Witness: I might answer that in this way. I went into it against my own will. I think that will clear up my position in the matter.

Asked what he did in connection with the matter of the bluff, the witness testified that he succeeded in closing the streets about the proposed grounds in New York, and prepared the plans which were pretty extensive and were exploited in the newspapers. Believes Mr. Gilmore gave interviews to newspapers as to what was intended, but witness did not. The streets were ordered closed by the Board of Aldermen, but were never closed; had authority to do so. This fact may have been published. Witness gave out an estimate of $480,000 as the cost of building the stadium. He told newspaper reporters about this, and that they intended to build it. There was not a word of truth in this, and he did it as a hold-up.

Asked what moral justification he had for that kind of procedure and whether or not Organized Baseball had treated the Federal League all right before that, the witness answered: "Well, I imagine there were some things where we might say it was not treating us right, but lots of things where they were." Asked whether witness had any moral justification for planning and
680 putting into execution a deliberate hold-up like that, he answered: "Well, I don't suppose we had; at least I don't suppose I had."

Q. Had organized baseball treated the Federal League all right during the two years of its life, or did it not strike you as pretty hard for them to make you and Mr. Gwynne and others lose money, and did not you feel that to be a real justification for fighting the devil with fire? Was that really what you had in mind? A. I suppose they were not doing much more than we were, by taking their players and disorganizing their clubs.

Q. The competition was on and it was sharp and it was hurtful to both sides, was it not? A. Yes, sir.

Q. It made the price of players entirely too high to make it profitable to either side, and you suffered the most because you were the weaker and younger? A. I suppose we suffered because no one attended our games.

Q. I say, you were the weaker and younger? A. We were younger—I don't know whether we were weaker.

Q. That is very interesting. Do you think you were the stronger? A. No, sir, I do not.

Q. Do you think you were as strong? A. It appears now that we might have been as strong.

Q. Might have been as strong? A. Yes. We did not think so at the time.

Q. So you did not go out because you did not have money, actual money, or potential financial strength at all; simply because the com-

petition was sharp and you were not making money, and g
681 tired of the game, and they got tired of the game, and yo
sold out and they bought you out. That is about the stor
is it not? A. It is about the story.

Q. You knew about the filing of the suit in Chicago, did you not
A. I knew that such a suit had been filed, yes, sir.

Q. Your club was a party to that suit, one of the plaintiffs in th
suit? A. Yes, sir.

Q. You and Mr. Gwyner approved the filing of the suit, did yo
not? A. I presume Mr. Gwyner did.

Q. You knew the suit was to enjoin organized baseball from e
forcing the reservation clause in their contracts to the detriment
the Federal League, and for making false representations, threa
and intimidations toward you? A. I know that suit was filed f
some purposes of that kind.

On redirect examination the witness was shown the tentative agre
ment, and was asked if its contents corresponded to the accou
given of it at the Biltmore meeting, to which question the witne
replied that it did. He further testified that it was said that the i
tention was to take care of all the interests, but the tentative agre
ment takes care of but three clubs,—Chicago, Brooklyn and Pitt
burgh,—and nothing is said in it about any other club; that $40,0
was not the total of Gwyner's and witness' investment in the Pitt
burgh club. That was the money they invested at the begi
682 ning of 1914, to put the stands in condition to be use
Their total investment was about $225,000, and that was
total loss. It was on account of this total loss that the $50,000 w
paid under the peace agreement. The witness sustained a profe
sional relationship to Mr. R. B. Ward, and had designed all of the
bakeries, and everything in that line that they did. He went in
the Federal League at the request of Mr. R. B. Ward.

On recross-examination, the witness testified that the Pittsburg
club sold several players to Organized Baseball after the peace agre
ment for about $13,000. That is all he knows about the play
transactions. This sum went to the Pittsburgh club in addition
the $50,000.

AUGUST HERRMANN, one of the defendants, being first duly swor
testified for the defendants on direct examination as follows: Th
he lives in Cincinnati and is chairman of the National Commissi
and president of the Cincinnati Baseball Company which is a co
stituent club of the National League; that he has been chairman
the National Commission since September, 1903, when the prese
National Agreement was adopted; that he and his colleagues pu
chased the Cincinnati Club early in August, 1903, which was a cl
of the National League. They purchased the interests of Mr. Bru
who owned the majority interest with Mr. Lloyd. In 1902 the p
vious National Agreement had been abrogated, and before purcha
ing witness and his colleagues went over the ground fully, and co
cluded that the first thing to do was to reestablish a National Agr

ment. There had been a National Agreement in some form or other as far back as 1883, and it was abrogated in 1902. The parties to it had been the National League, the American Association and
683 probably the Western and Northwestern leagues. The American League broke away from the National Agreement in 1902, in which year there was no National Agreement in operation. The name of the American League, witness imagines, was previously the American Association. While Mr. Brush had witness' offer under consideration, Mr. Bancroft Johnson came to Cincinnati, and witness had quite a talk with him. Told him of his offer to Brush, and what they had in mind in case the offer was accepted, that in witness' judgment the first thing was to reestablish the National Agreement, and gave him reasons therefor. Conditions in that year were very bad. There was no discipline among the players; players were jumping contracts; and the Baltimore American League club had previously been practically disrupted, the principal players being taken away from them. A few of these players afterwards went to Cincinnati, others to New York, and others elsewhere. It was the judgment of witness and his colleagues to re-establish the National Agreement, and during the fall and winter of 1902 and 1903 had meeting in Cincinnati, attended by committee of American League and committee of National League; and the Cincinnati agreement was drawn up. It was a preliminary or tentative agreement, providing for adoption of the National Agreement now in operation. In witness' judgment, the public was then very much dissatisfied. Conditions were bad; no discipline among the players, but players were jumping their contracts, and it led up to a serious proposition; it had practically disrupted the major league club in Baltimore, in the American league. In regard to the Cincinnati agreement, a committee of four representing the National League and a committee of four representing the American League agreed upon a
684 tentative proposition which was afterwards ratified by both leagues. These two committees agreed to formulate an agreement affecting only the two major league clubs, and they also invited into the conference later on Mr. Powers, president of the National Association, which was composed of various minor leagues. They met subsequent to the winter meeting in the following August or September of 1903, in Buffalo, and adopted the present National Agreement, under which they have been operating ever since, with some minor amendments from time to time. One of the provisions of the National Agreement is that the president of the American League and the president of the National League shall be members of the National Commission, and they are to choose the third party who shall be Chairman. Mr. Johnson has been president of the American League ever since its formation, but there have been quite a few changes in the National League.

The witness further testified that both the American and National Leagues are voluntary organizations, each with eight clubs and a president of the league in an administrative capacity. Neither league is an organization for profit. They simply raise sufficient revenue to provide for operating and administrative purposes. Each raises rev-

enue in a different way. In the National League, each club pays a
annual fee of $100 and all other operating expenses are raised b
assessments against the eight clubs, share and share alike. In th
American League there is an assessment against the gate receipts
and in that league when any money is needed for operating it i
assessed against the eight clubs, and the club having the greatest rev
enue pays the most money. In the National League, in recen
685 years, since the Federal League came into operation, there ha
been an assessment against the gate receipts to meet extraor
dinary expenditures. All payments by the National League unde
the peace agreement were made from assessments against gate receipts

The witness further testified that the National Commission is no
an organization for profit, and never has been, and it is not incor
porated. Previous to 1905, when there were adopted rules governing
the World's Series, the operating expenses of the National Commis
sion were assessed share and share alike against the two major leagues
and an assessment was also made against the National Association
Later, provision was made in the National Agreement so that an as
sessment was no longer levied against the National Association. I
1904, the American League pennant winner challenged the Nationa
League pennant winner for a World's Series. Mr. Brush, ther
President of the New York National League Club, refused to par
ticipate because there were no established rules. Thereupon the clu
owners thought it advisable to establish such rules, and the view o
all the presidents of the clubs of the two major leagues were asked, and
incorporated in the rules promulgated. These are the rules now
controlling World's Series. There has been one very important
modification. The best thought of 16 major league club owners went
into those rules. But the important change was in the division of
receipts. At first the rules provided that the National Commission
should receive 10 per cent of all receipts of all games, which money
was to be used for operating expenses instead of assessments against
the leagues. Of the remaining 90 per cent, 60 per cent of first four
games was to go into the players' pool, 75 per cent of that
686 going to the winning players, and 25 per cent to the losing
players.

This brought about dissatisfaction the first year because it de
veloped that some players were forming a pool whereby they would
split their receipts. An amendment provided that in the future the
players' pool was to be divided 60 and 40, and in 1912 the winning
players' share amounted to $4,000 each. The rules were later
amended so that the winning players' maximum was $2,000, the
losing players' maximum $1,400, and the balance of players' pool
still remaining was to be divided among the players in both major
leagues who came second, third and fourth in the respective pennant
races. Limiting participation of the players to receipts of a certain
number of games provided safeguards absolutely necessary. It pre
vented series being purposely prolonged. For a number of years
30 per cent of the 90 per cent was divided between the two contesting
clubs, but this was revised in 1912 or 1913 so that each contending
club would be required to pay into their respective league treasuries

25 per cent of their receipts as a part of the cost of operating the respective major leagues, and this was again changed during the past winter and the proportion so payable raised to 50 per cent. The income received by the National Commission in this way is not the subject of profit distribution. It is used for the purpose of paying expenses of umpires, scorers, some of the ticket printing and other expenses, during the World's Series, including the purchase of necessary emblems for the victorious players, pennants, etc. The balance goes for operating expenses of the Commission, the payment of salaries, rent, telegrams, and whatever the operating expenses may be.

687 Once had a balance of $40,000, which dwindled to nothing, and the National Commission was then required to borrow money. This was particularly true when they were trying to restrain players from violating contracts.

The witness further testified that the National Association, which constitutes all the minor league clubs, is the party of the second part to the National Agreement and they have a National Agreement of their own under which they operate. One of the provisions of the National Agreement to which the two major leagues and the National Association are parties is that the National Association shall be permitted to govern their internal affairs, and for a number of years "we permitted that association to do that without any interference." Their agreement provides for a Board of Arbitration consisting of 7 or 9 members, and when minor league players had grievances for which they could not obtain the redress to which the National Commission deemed them entitled—their claims sometimes being overlooked for a long time, etc.—the National Commission undertook to go into their cases themselves, particularly when a minor league player appealed to it for redress. This has been the custom for the last four to seven years with good results, because in the beginning there were quite a number of appeals, but now there are comparatively few, the National Association in witness' judgment having become more careful than in former years. Witness does not know of a single case where player or club, dissatisfied with the National Commission's adjudication, was required to go into the courts with reference to such action, with the possible exception of the Hegeman case five or six years ago.

688 Thereupon the witness' attention was directed to the case of Mr. Walsh, who testified in behalf of the plaintiff, as an instance of where a player appeared to have a grievance against Organized Baseball, and witness testified that in his judgment Walsh had his redress as provided under the rules or the agreement entered into with the players' fraternity, and he believes that the salary offered Walsh by the Memphis Club was not large enough, and that had he followed up his rights he would have received what he was entitled to. His rights were to appeal to the National Board, and then to the National Commission, if the salary offered him was not satisfactory. In such cases, the National Commission, in the case of players' complaints, endeavors to arrange matters satisfactorily, but up to the present time the Commission has been called on in very few instances of this kind. Generally such cases arise under the reserve clause,

where the player is dissatisfied with the salary tendered him for the ensuing year.

The witness was then asked to explain the origin and development of the reserve clause, and he testified that the history of baseball clearly demonstrates that a reserve clause was always necessary; that it was so understood by the baseball public, the player and the owner. The reserve clause was first adopted two or three years after the National League was organized in 1876, and it has been looked upon as a necessary condition in the operation of baseball ever since that time. The reserve clause could only affect those leagues and clubs operating under the National Agreement. All leagues and clubs were invited to operate under that agreement if they cared to do so. The reserve clause, however, does not effect a player, in witness' judgment, until he has reached the highest classification—major league company. There never were 10,000 or any such number of minor league players as has been testified to
689 here. The greatest number at any time was 5,800, none of whom are tied by the reserve clause. In other words, a club has no rights to a player if a club of higher classification wants him. The major leagues can draft from Double "A" leagues down to Class D. Double "A" clubs can draft from Class A, and from lower classifications, and lower classifications from one to the other, so that notwithstanding, a player is on a reserve list, he is subject to draft until he reaches the major leagues. The prices payable for the drafted player depends upon the classification. Major leagues pay $2,500 to Double "A" clubs, $1,500 to Class B, $1,250 to Class C, $750, and $500, "down the line." The National Association fixes the draft prices from minor league clubs. The draft prices are paid by the drafting club to the club from which the player is drafted. It is always understood that as a player advances his salary is increased, and this is practically provided for, in effect at least, as one of the purposes of the National Agreement, in its preamble, and that is the way it works. During 1911 to 1916, both inclusive, the major leagues paid for drafted players from the minor leagues $472,400; for purchased players $1,331,728; and additional payments on purchased players of $680,420, or a total of $2,484,550. In addition, minor league clubs or higher classification paid to lower clubs during the same period $1,440,400. These payments were to clubs which the major leagues recognized as training schools of professional baseball players. The minor leagues cannot exist unless a scheme of this kind is carried out from year to year, and this opinion is based upon what has happened since the Federal League was organized. Asked: "What has happened;" Witness answered:

"The minor league players in many instances were taken from minor clubs without the payment of a draft or purchase price
690 and the result has been that the minor league has been reduced from 38 leagues, the highest number they had in any one year, to about 7 or 8 or 9."

Q. You mean to say that is the result of this incident in baseball history, the minor leagues have been reduced in the way you have

stated? A. Positively so; and I repeat, the minor leagues can not live unless they have a source of revenue of this kind."

Mr. Farrell, secretary of the National Association, informed witness that during the period of 1911 to 1916, inclusive, his records show the minors paid to the majors for players approximately $125,000 per year, but this includes particularly during the last two years the Federal League was in operation, the prices supposed to have been paid by minor league clubs to major league clubs for players sent to them under optional agreements where the price in most instances was $300. But the money was not paid because the minors were not in a position to pay it. So the amount stated is a paper account which would be materially reduced if the details were examined. The major league clubs pay for their players. "We make the clubs pay."

The witness was then asked in regard to the operation of the waiver system and he testified that the waiver system means, first, that you cannot send a player from higher to lower classifications without securing waivers from all clubs of the classification in which the player is. In previous years this could be done in the two major leagues. In other words, the American League could send a player to the minors by simply securing American League waivers, regardless of whether he was of a major league ability, but in recent years the rule was changed to require waivers from both leagues. Players upon whom waivers have been obtained in the major leagues must also be waived on by Class AA and A leagues before the player can be sent to a lower classification. All major league clubs, and all clubs in Double "A" leagues, thirty-nine clubs in all,
691 waived on Walsh. The demand in the major leagues, Double "A" and Class "A" leagues, is always more than the supply. If a player shows ability, the waiver price never stands in the way. Fifteen hundred dollars is the waiver price in the National League. It is a reasonable figure compared to what is paid for players brought up by purchase or draft. If the Cincinnati club asked waivers on a player, and some club in the National League claimed him—and a club in that league would have the preference—it would pay Cincinnati $1,500, unless waiver was requested on a player who had been purchased from a minor league club and on whom part payment had been made, and additional obligations were to be met. Then the price on that player, if claimed by another club, would be determined by the president of the League or the National Commission. If several clubs are willing to pay the waiver price, the matter is determined by lot by the president of the league. This is the case also in the matter of a draft. It is determined first by lot whether players go to the National or American League, and then it is determined by lot to which particular club he goes. This has proven very satisfactory, and witness had heard no complaint.

The witness further testified that under the rules of the Commission, clubs are not permitted to sign up and hold more players than they actually need. The reserving of players is simply to protect clubs owning rights to those players against piracy of others, and

without this reservation, players at the end of each year would be in the open market and would all go to the club having the greatest patronage instead of going to the one which had originally drafted or purchased and developed the player. The reservation is not to monopolize the player market, but rather to limit it to the extent that no club can have more players on its reservation list
692 than are actually needed for its own purposes. In previous years there have been cases where clubs were permitted to sign more players than were needed, and this condition was remedied. Some clubs had as high as 50 players on their reservation list. This was 6 to 8 years ago. Then was enacted a player limitation rule to prevent a club from cornering the market on players to a greater extent than they were actually needed. The National League reduced the player limitation during the playing season to 22 players. The American League held it at 25, but this winter both leagues got together and reduced it to 22 players.

This number is in accordance with the judgment of the managers as to the number of players which each club should have. Utility men are required for the outfield and infield, and there are required in witness' judgment three catchers and six to eight pitchers. The witness thinks 20 or 21 players should be the limit. In the minor leagues, the number of players are scaled down, Double "A" clubs having less than the major league clubs, and Class A clubs a lesser number, etc. Possible injury to players has been taken into consideration. There has not been any cornering of players by one of the major leagues as against the other under the operation of the National Agreement and the National Commission. The principle works uniformly through both leagues. There has never been any contracting with players in excess of the needs of Organized Baseball to prevent their falling into the hands of competitors operating under or independently of Organized Baseball. The demand for players is always greater than the supply. Every major league club employs one or more scouts scouring the country from the
693 beginning to the end of the season to secure players of major league caliber. Witness knows now of several clubs in the National League, and one or two in the American League, looking for players for a particular position, who cannot be found. The Cincinnati Club is ready to employ such players today, and try them out and develop them.

The operation of the reserve clause has been just the contrary to leaving the player at the mercy of the club in regard to terms for the ensuing year. Organized Baseball has always tried to satisfy players so far as salary is concerned, and witness knows of very few complaints. The reserve clause was changed after the meeting with the Players' Fraternity in 1914, and the new clause provided that the player was only reserved for the subsequent year. It was up to him after that if he did not care to enter into the same kind of contract. Of recent years, have also inserted into the contract the provision that the player was to be compensated for the right to reserve him for the succeeding year. This was never done in the past. He is compensated for the reservation, whether he is or

major league caliber or not. They were not forced into this by the Federal League. It was done before the plaintiff club was in operation—in the fall of 1913, when the Fraternity made their requests, and adopted in the early part of 1914 at Cincinnati. If a player was not satisfied the best results would not be gotten, and in many instances players' salaries are voluntarily increased during the contract year. Frequently a player comes from low classification at a very nominal salary, but turns out to be a good player. One such case concerned a pitcher named Bresler, who came from the Southern League, where he was getting $250 a month. Cincinnati
694 paid him $325, and after a month or so increased it to $500 a month. The club was not required to do so under the contract with him. And witness knows of a number of cases of that kind. Sending a player from place to place without consulting him was recognized by the Players' Fraternity as a necessary condition. When a player goes back in his profession to lower classifications it naturally follows that he cannot expect to get the things he did before. Mr. Mowrey, who testified in behalf of the plaintiff, came to Cincinnati, and his salary was increased each year. Then he went to Baltimore and talked about a three-year contract. Witness does not blame him because he was doing what was best for himself. He realized he was practically through baseball. Witness noticed Mr. Mowrey wore glasses, and as a major league player he was practically at the end. He was a fairly good player and was well treated. Witness cannot see in what respect injury was done Mr. Kauff. He was drafted by Indianapolis of the American Association, from Hartford, and then signed an Indianapolis Federal League contract. While this contract was pending he insisted on having another contract with that club for three years, and witness was told at the time that the Federal League Club had to sign him to a new contract or he would have jumped back into Organized Baseball. He was then transferred by Indianapolis Federal League Club to Brooklyn in the same league, and signed with that club. Subsequent to that he represented to New York National League Club that he was not under contract with Brooklyn, and New York took him on. It was then ascertained that he was under contract with Brooklyn Federal League Club and the New York club was notified by the National Commission not to permit Kauff to
695 play because he was under contract. Organized Baseball was not harboring any players who jumped contracts. It did not want the Federal League to take its players who were under contract. By contract, witness means actual contract and not the reserve clause. Organized Baseball did not bring suits to restrain players from operating with other clubs in violation of their reserve clause. The suits brought were to restrain players who had jumped contracts in mid-season and were playing with the Federal League. There were three such cases in Cincinnati,—Johnson, Marsans, and Davenport. Had signed Marsans in 1912 or 1913 at $4,400 a year for three years. Probably purchased him from the New England League, and started him out at $1,600 a year. He jumped his contract in mid season, because the St. Louis

Federal League Club offered him greater inducements, and at that time two other players left the Cincinnati Club. It was then within half a game of first place, and by losing those players in the middle of June, it wound up the season in last place. Johnson was the first player who jumped, and suit was brought to restrain him. Then Marsans and Davenport jumped to St. Louis. Subsequently a couple of other major league players jumped, and suits were brought in those cases, and in those cases only. These players jumped to the Federal League. The reserve clause has been used only as a matter of internal protection for Organized Baseball, and that is the only way in witness' opinion that it should be used, "to protect yourself." If a player fails to report he is automatically suspended under the rules. If a player goes to a club which is a member of what has been termed in this case an outlaw league, he is also suspended and placed on an ineligible list. By an outlaw league is meant a league which has a player who has violated his contract, as is provided for by the Agreement and rules. It does not merely mean a league which is not included in Organ-
696 ized Baseball. The term outlaw does not apply to a league which harbors a player who has merely jumped his reserve clause.

If a player within the organization failed to report under the reserve clause, he was automatically suspended within the organization, if the club took that action, but it is very seldom done, because clubs simply pay no attention to such a player, and within a reasonable time try to adjust their differences, which in almost every case they do. If a player fails to respect his reserve and he and the club did not agree to terms, the player could take his claim to the National Commission, if it was a major league club, or to the National Board of Arbitration if a minor league club, with an appeal to the National Commission. Asked: "But supposing he stood firm for more than the club would pay him or more than those appellate parties would recommend that he should be paid. What was the extremest thing that happened." Witness answered "that would end it," and if he was promulgated as an ineligible player, which is very seldom done, the negotiations were off, and no more attention paid to him. Very few of these cases ever occurred since witness' connection with baseball. The club had the power to do this. The right of appeal is open to the players only. The Federal League had a different kind of contract insofar as the reserve clause was concerned. The plaintiff club contract provided that a player could be reserved for a ten year period, with an increase in salary of four per cent each year.

The witness further testified that the ten-day clause has been found very necessary to maintain discipline among the players. In January, 1914, when the matter was first taken up with Mr. Fultz and the committee representing the Players' Fraternity, it was gone into very carefully in Cincinnati. The meeting was largely attended by club presidents, managers and players, all of whom came to the same conclusion, particularly the player managers, who
697 contended that unless the ten-day clause was present discipline could not be maintained, the public would be dis-

satisfied and the game would fall. It was not put in the contracts to arbitrarily give the right to dismiss a player. The clubs cannot dismiss a player unless all the other clubs of the same classification consent to it. The club can notify the player of his dismissal, but any other club in that same league can take his services. There is no waiver price required to be paid for a player if he is unconditionally released. They get the player for nothing when he is given his ten-day notice of release, and the exercise of the ten-day option clause makes a player a free agent, and it is permissible for him to seek employment anywhere he can find it. The club exercises the ten-day option.

The witness was then asked to suppose a case where waivers are asked on a player and are obtained, and then the club dismisses him under the ten-day clause, and the witness replied that he would then be a free agent, and could sign with any other major league club in the same major league, which would secure him without compensation.

The witness was then asked to suppose a case where the club first exercises the right of dismissal under the ten-day *cal*use without first asking for waivers, and the witness replied that that would create a reverse situation, that it has always been held that waivers must first be asked for in order to give every club an opportunity to secure the player at the waiver price, and if the player is not claimed, then if the club desires to exercise the ten-day clause it can do so, and it will make the player a free agent when he can be taken on by another club in the same league, without demand of waiver price, which has been done.

698 The witness was asked in regard to the Players' Fraternity agreement, and he testified that the request of the Players' Fraternity was made to the National Commission in early November, 1913. They appointed a committee to appear before the Commission, contending that there were some abuses existing which should be corrected. Among others was one where they claimed a major league club could arbitrarily send a player to a club of lower classification, without passing through the intermediate grades. Commission agreed that this should be remedied. They also contended at that time that when differences arose between player and club as to salary, the matter should be referred to the National Board of Arbitration in the case of a minor league player, with appeal to the Commission, and to the Commission in the first instance, in the case of a major league player. Other matters of minor importance were brought up, such as furnishing the player transportation to and from training camp and home, and also that the National Association players should not be dismissed without reasonable notice. This was the first time that minor league contracts provided for five days' notice for dismissal. The witness thought the results of the conference with the Players' Fraternity was satisfactory to all parties, and the players so stated. The conclusions reached at that conference were embodied in the agreement known as the Fraternity Agreement, and it was treated as having precedence over all previous baseball legislation, and it was

so stipulated in the Fraternity Agreement itself. But either party was given the right to revise certain paragraphs by giving notice during the subsequent year, which has not yet been done.

The witness further testified that he remembered a conversation with Mr. Fultz relating to the way in which Federal League
699 players should be dealt with by the Players' Fraternity. The request from the Players' Fraternity was received by Commission on Saturday, previous to the annual meeting of the National Association at Columbus in the first week of November, 1913, witness believes. Previous to that time all players of the Players' Fraternity were notified by Mr. Fultz, not to sign any contracts with major leagues and class AA clubs in Organized Baseball until their requests had been given proper consideration. Membership in the Players' Fraternity was confined to players in the major, Double "A" and possibly class A leagues. The meeting between the Commission, representatives of the National and American Leagues, and the Players' Fraternity Committee was held in Cincinnati the first week in January, 1914. After satisfactory agreement had been reached witness asked Mr. Fultz what he was then going to do with reference to the players, having in mind to have him lift the ban as to players signing contracts. He said he would notify his office to notify the players that they were now in a position to sign contracts. He did send out such notices to players, who then commenced to negotiate for 1914 season. Witness said nothing whatever to him in regard to any action he desired the Players' Fraternity to take toward players who went to the Federal League, though Mr. Fultz stated in his deposition filed in this case that witness had asked him to have the Fraternity expel those players.

Organized Baseball was anxious to get all players back, and had brought litigation in various cities. "Instead of expelling them we wanted them back". What witness did say to Mr. Fultz was, "What are you going to do now with reference to the ban that you
Fultz, had placed on the players as to signing contracts?"
700 Players that went to Federal League were automatically suspended by the Fraternity, not by the Commission. Organized Baseball had nothing to do with this. Witness did not request Fultz or his Fraternity to take special or discriminatory action against players signing with Federal League. There has been no blacklist in Organized Baseball from the time the National Commission was organized. Understands blacklist, as it has been used in this trial, to mean list of players who failed to respect reservations or violated contracts. But that is not accurate, because the rules of the Commission provided just what happened in cases of this kind. The Commission did hold—but not while Federal League was in existence, but at the time when there were two outlaw organizations, the Tri-State league and the Pacific Coast league—that what was to be construed as an outlaw organization was one that harbored players who had violated their contracts. Leagues that did that were designated as outlaw leagues. The player himself was automatically suspended or became ineligible. When

those leagues realized that they had made a mistake and asked to be taken back into Organized Baseball their request was granted, and players were always willingly taken back. At one time there was a bulletin issued showing just what players were ineligible. The reports of the National Commission include, with the exception of one year, a list of reserve players in all major league clubs and those lists show just how many, if any, ineligible or suspended players there were on the various clubs. There were very, very few. The Federal and National Clubs in Chicago consolidated as did the American and Federal League clubs in St. Louis, and they were at once notified that within a limited period they would be
required to reduce their consolidated reserve lists to the
701 maximum limit. We had in mind that no one club should
carry more players on their reserve list than were actually necessary. Gave them a little time to comply with this, because one of the stipulations of the peace agreement was that the various Federal League clubs have the right to dispose of the players they held either by reserve or contract, and it was desired to give them an opportunity to get as much as they could. We felt that was an asset they were entitled to.

The witness further testified that he recalled the Sisler case. It is quite a lengthy decision and there were hundreds of pages of testimony. He was a young player, and attention was called to him when playing on a college or semi-pro team. Scouts were sent to look him over. He was signed by an umpire of the National Association, the contract assigned to the Akron club, and transferred from there to Columbus, and from Columbus to Pittsburgh for $5,000. He never played with any of these clubs. For probably three years the player's name was carried on the reserve list of either Pittsburgh or Columbus club. He was a young player about sixteen or seventeen years of age, and his parents objected to his signing the contract. His attorney appeared before the Commission and asked that his name be taken from the reserve list so that he might play on his University team, and announce to them that he was not a professional ball player, which he had never been up to that time, and this was done. When Sisler finally decided to enter Organized Baseball he signed a contract with St. Louis, and Pittsburgh claimed his services. The Commission held that the player had been a free agent, and upheld his contract with the St.
Louis Club. Witness does not know of half a dozen cases of
702 players coming into major league baseball without any
previous experience in the organization, as Sisler did. The Commission was not compelled to decide in favor of St. Louis. There were talks about suits being instituted. Where controversies arose between the American and National League clubs it is to be decided by the Chairman of the Commission, but witness has never taken advantage of this, and discusses such cases with his colleagues. President Lynch and Governor Tener both took the same views of this case.

The witness further testified that increases in salaries of players going from club to club and from one classification to a higher

classification have been wonderful. Wagner went from $40 per month to $12,000 per year; Cobb from a nominal salary to $20,000 a year; Fred Clarke to $15,000 per year. Hundreds of other cases. Does not know of a case where player who showed merit failed to get advances, much larger than he could expect to receive under an option clause calling for five per cent increase each year. The rank and file of players always advance. Major league clubs never took advantage of the reservation clause, but increased salaries of players as they thought they were entitled to it. Witness judges that the Federal League had about 225 players in 1915 that came from Organized Baseball, but is not positive of this number. About the first of November, 1913, after close of Federal League's first season, the Commission was called upon by sporting writers, club owners and others, to give an official expression as to their attitude toward the Federal League. Witness drew up such an expression, first submitting it to Mr. Tener and Mr. Johnson, and obtaining their approval. It was given in response to a toast at a meeting
703 of the National Association at Columbus, and was published in the leading sporting papers, etc., and sent around to players everywhere. This stat-ment was issued November 12, 1913.

The witness thereupon identified said statement, which was offered and received in evidence, as follows:

"Defendant's Exhibit 1.

"The National Commission and Its Helpful Relations to the National Game.

A Toast responded to by Aug. Herrmann, Chairman of the National Commission on the occasion of the Banquet tendered by the Columbus Club of the American Association to the National Association of Professional Base Ball Leagues, at the Virginia Hotel, Columbus, O., November 12th, 1913.

Mr. Toastmaster and Gentlemen:

"I highly appreciate the opportunity to address you on this notable occasion as the representative of the National Commission. The toast assigned to me, just at a time when matters of the utmost importance to the game, and particularly to the players operating under the National Agreement are to be presented to the Commission for its consideration, place me in rather an embarrassing position, because I believe, and I am sure that my colleagues agree with me, that a public statement should not emanate from the National Commission at any time on any pending question or subject, unless all interested parties have had an opportunity to be fully heard. However, neither my colleagues nor myself have any hesitancy in going on record now with reference to some of the matters to which the attention of the baseball public—(Club owners, players
704 and patrons alike)—has recently been called.

"The helpful relations of the National Commission to the

National Game, I believe, are well understood by all of you. If I were to elaborate upon them I am quite sure I could not do so in the ten minutes' time that has been allotted to me.

"To epitomize, however, I contend that the game today is on a higher plane than ever before; your patronage has not only increased in numbers but in tone as well; the deportment of the players on the field shows a marked and steady improvement in recent years; the construction of new and modern plants has been pleasing to the patrons, resulting in more substantial and willing support on their part.

"The fear that existed among players generally when the National Agreement was first adopted and the Commission created, that it was done for the purpose of reducing or limiting salaries, has been entirely eliminated. Salaries today are greater than ever before. Baseball litigation in the civil courts is a thing of the past. Club owners and players have been placed on an equal footing. Neither is at an advantage or disadvantage in case of any dispute.

"Nowhere in the world can you point to a condition such as has obtained in baseball in recent years. In the eleven years that the Commission has been in existence over 8,000 ball players were employed on an average each year, with salaries aggregating into millions of dollars; over 275 clubs have been in operation each year; new leagues have been organized and old ones dissolved; millions of dollars have been put into new plants, and while disputes
705 have arisen at times between clubs and leagues, as well as clubs and players, every contention has been satisfactorily and equitably adjusted by those vested with authority, so that during that whole time litigation in the state or federal courts between baseball parties of this country has been practically unknown.

"Having in mind just these few results of the helpful relations of the Commission to the game, I am quite sure we can all come to the conclusion 'That we are proud of our National Game—Base Ball.'

"During this and the preceding year we have heard a great deal about a proposed Congressional Investigation of matters pertaining to Organized baseball. The Commission regrets very much that this investigation was not promptly proceeded with. Instead of fearing it, we courted and invited it. Our records and acts are an open book; there is nothing that we desire to conceal. The National Agreement as well as the rules of the Commission speak for themselves; the contractual obligations imposed upon player and club owners are open for the most careful scrutiny. I reiterate that the Commission courts an investigation at any time, either Congressional, Judicial, or any other kind, of all of the affairs pertaining to organized baseball, in full confidence and belief that nothing but good to the National game can result therefrom.

"We have recently read and heard a great deal about the 'Players' Fraternity'.

"This is perhaps the first time the Commission has had occasion to define its attitude toward this element of the game.
706 "Concerted action by the players with due regard to all other interests will, in our judgment, contribute materially

to the betterment of baseball. But in formulating their demand and in insisting on concessions, the privileges of patrons and right of those financing clubs, must be accorded adequate recognition.

"We are firmly of the opinion that through a body of this kind the relations between officials, club owners and players will be more thoroughly cemented than under the conditions that have existed in the past. Conferences between these various interests will undoubtedly be beneficial. Friendly discussions between employer and employee in all other lines, invariably bring good results. There is no reason to believe that it will be otherwise in baseball. It is for that reason that the Commission announces that it will be glad to receive the representatives of the 'Players' Fraternity' at any time, to take up and discuss in a formal way any complaints that ball players may have, thus at the same time affording us an opportunity to discuss with them such suggestions as club owners may present, all with a view of coming to such conclusions in all matters of dispute or contention, that will be just, equitable and fair to all concerned.

"The Commission is also firmly of the opinion that the best results can be secured if the Fraternity at such conferences is represented by a Committee consisting of the players themselves rather than by someone, even if an officer of the organization, who is not directly connected with the game as a player, and this applies particularly to the President of the Fraternity at the present
707 time. It is quite natural that the question will arise why this attitude of the Commission on this point.

"The Commission does not desire to criticise Mr. Fultz, the President of the Fraternity, relative to his actions since its organization, but we believe we would be remiss in our duties if we did not call attention to his attitude on matters pertaining to the welfare of those whom he represents as well as his references to the actions of the Commission from time to time. Almost simultaneously with his election as President of the Fraternity last year, there appeared in a monthly publication, a department devoted to 'the activities of the Organized Ball Player', edited by Mr. David L. Fultz. In this department he has from time to time criticised the findings and rulings of the Commission. There can be no serious objection offered by the Commission, or any of its members, to an action of this kind on the part of Mr. Fultz, or anyone else, in fact, discussion of our work is invited from time to time, especially so if it is fair and based upon the facts. There is however, serious objection on our part to have an official representing the fraternity criticise the work of the Commission, unless he has had before him all of the evidence and all of the facts with reference to the subjects passed upon by him, which we know he has not had in some of the matters to which he has called attention, and, therefore, was not in a position to give that fair criticism to our work that we invite from time to time. Whether his actions in this matter was for the purpose of creating strife and dissention is not a question for the Commission to decide, except to state that at no time has anything of a commendatory character per-

taining to the Commission appeared in this section of this publication.

708 "The attention of the Commission has been called to several purported interviews with Mr. Fultz, which appeared in the 'New York Press' about two weeks ago. If these interviews are authentic, then his action is certainly to be regretted. We have heard of the so called demands of the members of the Fraternity, but nothing officially had at any time, at least not to the knowledge of the Commission, has been presented to anyone vested with authority to consider and pass upon matters of this kind. Yet, notwithstanding this, Mr. Fultz assumes that certain clauses of the requests will not be granted, specifying particularly clauses three, five, ten and thirteen. Speaking for the Commission, I may say we are firmly of the opinion that this is not the way to proceed to secure the results that the Fraternity desires.

"In one of these interviews in the 'New York Press', Mr. Fultz calls attention to the fact that the recommendations, which the Fraternity were to submit, had already fallen into the hands of the Commission, club owners and the press (unofficially, of course) and attributed this to what he termed the 'black sheep' of the Fraternity. This reference to members of this organization is resented by the Commission as an unmerited reflection on professional ball players. For Mr. Fultz's benefit I desire to state that instead of 'letting the cat out of the bag' as he applies the term to the actions of certain members of the Fraternity in this matter, quite a number of the members of the highest standing therein took the matter up direct with those in whom they were most interested, their employers:—the club owners if you please,—all with a view of discussing the 709 requests in a friendly spirit, and with only one idea that of securing the best results. Instead of being condemned for their actions and termed 'black sheep', their attitude should be commended and respected.

"The attention of the Commission has also been called to the fact that some time ago, Mr. Fultz submitted a proposition to the members of the Fraternity requesting a pledge or promise on their part to go on a 'strike' so-called,—on a moment's notice from him. Information of this character has been furnished club owners as well as the Commission by the members of the Fraternity direct. This action on his part, to put it mildly, was revolutionary, especially so, when you have in mind that from one end of the country to another the tendency is to prevent strikes of any character, or in any line of business or industrial occupation, the sentiment everywhere being to settle all disputes in a peaceable way, either by conferences, arbitration, or otherwise. Should it be any different in organized baseball? Emphatically, No. And in this connection I desire to commend the attitude of the players in the stand they took with reference to this suggestion by refusing to comply with his revolutionary request and demand, and call particular attention to the fact that when this suggestion was made by him to the Fraternity, no grievance, no complaint has been filed with the Commission either by him or the Fraternity, no demands made, and

consequently no refusal on our part to entertain any concessions that might be fair and proper.

"Before passing from this subject, I desire to state that the views as expressed by me tonight are those of the members of the
710 Commission. In so far as the National Association and its players are affected, the adjustment of these demands are entirely in the hands of that Association and its National Board. I desire also to announce that on Saturday last the Commission received twenty-six petitions embodying seventeen suggestions, which the members of the Fraternity submit for the consideration of the National Commission and the National Board. These petitions although not accompanied by any communication from the President of the Fraternity, were supplemented by a brief letter from him two days later, containing the signatures of quite a number of the players of all the clubs in the National League, except the Boston Club; of all the Clubs in the International League, except Toronto, Buffalo and Baltimore Clubs, and all the Clubs in the American Association, except the St. Paul Club. I understood that the National Board has received similar petitions. From press accounts it appears that Mr. Fultz has already submitted an argument why each of the requests should be granted, before giving either Commission or the Board an opportunity to consider them. In so far as the Major Leagues and the Commission are concerned, proper action with respect thereto will be taken in the near future. In this connection I desire to state that notwithstanding the actions of Mr. Fultz since he became President of the Fraternity, we are broad-minded enough to announce that if the members of the Fraternity desire his presence when the matter is taken up by us there will be no objection on our part, but we sincerely trust and in fact request that the players themselves, or at least a Committee repre-
711 senting them, be also present. Pending consideration of this matter, I call attention to the fact that one of the objects of the National Agreement as set forth in its preamble is 'Promotion of the welfare of ball players as a class by developing and perfecting them in their profession and enabling them to secure adequate compensation for expertness.' The membership of the players Fraternity may be divided into three groups—those in process of development, those who have made good and are in their prime, and those whose professional ability is on the wane. Legislation for the benefit of one of these groups of players at the expense of the other members of the Fraternity and to the injury of National Agreement clubs and of the game itself should be given the most serious thought by all concerned.

"In the past two years we have seen and read a great deal about the United States and Federal Leagues, two organizations not operating under the National Agreement. The Commission has never gone on record with reference to its attitude with respect to either of these leagues but we will do so now with reference to the latter, as the life of the former has already been ended. Baseball is not, cannot, and will not be confined to these leagues, clubs or players who operate under the National Agreement. The game is open to all

Anyone has a right to engage in it in any capacity that they please, without any interference on the part of those engaged in organized ball, and I may add there will be no interference unless it is done in a retaliatory way when contractural obligations or vested rights are illegally interfered with. Competition in all lines of
712 business must be expected at all times, and this must apply to baseball as in anything else. When competition comes, it must be met, and the question then be determined is the survival of the fittest. College players, semi-pro players, free agents, the boys on the lot, when entering the professional can cast their lot within or without organized baseball. This is a privilege that cannot and will not be denied them. When, however, players have affixed their signatures to contracts that have been mutual and satisfactory, the Commission will make an effort at all times to enforce all provisions of such contracts, whether it affects the player or the club owner. In former years there existed a doubt with reference to the reservation clause in a player's contract, it being contended and probably correctly so, that it was not an equitable arrangement. This condition has now been changed. A player signing a contract containing a reservation clause, is compensated for his action, whether he is reserved or not. That being the case an effort will at all times be made by us looking towards the respecting of this, as well as any other clause in a player's contract, by all the parties to it. For these players who do not respect their obligations there will be no place in organized baseball, either now, or in the future, and the same thing applies to the club owner as well.

"In conclusion I desire to state that there are two suggestions that the Commission recommends that the National Association and its Board give the most serious and careful consideration:

"1st. We are firmly of the opinion that the contracts between club owners and players, in all leagues operating under
713 the National Agreement, should be of a uniform character, and

"2nd. That a change in the rules of the National Association holding that side agreements are illegal, unless embodied in the player's contract, should be modified by qualifying such rules and adding there, 'unless such side agreements are signed by both parties interested therein, or have been established by a preponderance of the evidence submitted as having been mutually entered into.' I again desire to thank you for the opportunity offered me to be with you tonight and for the kind attention that you have given me."

The witness further testified that this statement was made by him in responding to a toast on the occasion of the banquet tendered by the Columbus Club of the American Association to the National Association of Professional Baseball Leagues at Columbus, Ohio, November 12, 1913; that it was expressive of the attitude of all the members of the National Commission, and was given out as an official expression.

Witness was asked what conversations he had, after Federal League was organized as a major league, with representatives of that organization, or its constituent clubs, and he replied that in 1915 he met in

person some of the officials of every club then represented in the Federal League, including representatives of the Baltimore Club, before he met them at the joint conference at the Waldorf. Probably had such meetings in the fall of 1914. Met Mr. Goldman once or twice in 1914 at the Waldorf. Thinks that was the first time he met Mr. Sinclair, and has only met him once or twice since.

714 Would not say that anything of significance was discussed at these meetings. They were just casual meetings. But in 1915 witness had conference with Ra-in, Janney and Hanlon late in the afternoon of December 17th.

Mr. Pepper: Now before I examine you about the details of the conference I want to ask another question to which Mr. Marbury should have an opportunity to object, your Honor.

I want to inquire of this witness, and I do inquire, what conferences he had with representatives of clubs in the Federal League other than Baltimore, preliminary to the time of your conference with the Baltimore people.

Mr. Marbury: We object to that as irrelevant.

The Court: What do you seek to bring out he did at these conferences?

Mr. Pepper: I seek to bring out from the witness' testimony as to what, from the admissions of members of the Federal League constituent clubs, were the conditions in their clubs at that time, as affecting the question whether or not the league was in a flourishing condition or in some other condition than that, all as bearing on the question of what it was that caused the ultimate disruption of the Federal League.

The Court: You offer those statements made by the members of the representatives of those other clubs as evidence of the fact, of admissions?

Mr. Pepper: I do; I offer them as evidence, as admissions by other members of the Federal League organization as to the conditions obtaining in the circuit or league of which they were all together members.

715

The Court: I hardly think I could admit those statements as evidence of the fact, not being admissions by the plaintiff. So far as that offer is concerned I think I should have to reject it. An exception may be noted to that.

Mr. Pepper: Then, may it please the Court, I offer to interrogate the witness respecting conferences between him and members of Federal League clubs other than the plaintiff, for the purpose of showing the steps which led up to the making of this peace agreement and as bearing on the question of the good faith of the defendants in organized ball in the transaction which is in issue here.

The Court: If Mr. Herrmann says those conferences became steps in the procedure that led to the peace arrangement, the offer might deserve a different consideration—if you understand him to mean that; if he assents to that.

Mr. Pepper: I will withhold the particular question that I have referred to until I have asked him the preliminary one then, sir.

Mr. Marbury: We ask your honor to let it go in subject to exception.

The Court: It certainly would be if it came in at all, but I would like to make sure if it comes within the reason of the other ruling.

Asked when such conferences took place, the witness replied that the first one of these conferences was in the fall of 1914, or the early spring, with Mr. Weeghman at the Waldorf; that he had another interview in Chicago with Ward, Robertson and Gilmore, while on his way to a meeting of the National Association, and again on his way back from that meeting. This was in the Fall of 1914. Also met Sinclair, at his invitation, at Columbus, in mid-summer of 1915. In
October of that year, met at Philadelphia, Gilmore, Sinclair,
716 Ball and Gwyner. This was during the World's Series, and
Mr. Johnson was present. Again met Gilmore and Sinclair at the meeting of the National League in New York, on December 13th, in the afternoon, and in the evening when the tentative agreement was drawn up.

The Court: I do not think you need to speak of anything later for our present purpose. As to this last conference that has been the subject of evidence anyway, so I suppose it would be the three conferences before.

Mr. Pepper: That is correct.

By Mr. Pepper:

Q. With regard to the conferences that you have enumerated that preceded the conference on December 13, I wish to ask whether their subject matter was such as to bear on the questions discussed at the conference on the 13th. A. Positively so.

Q. State whether or not the subject matter under discussion at those conferences was something that was influential or operative with you in the discussions on the 13th and the 17th of December. A. Yes, sir. They may have been along different lines. There were a number of things brought out on that proposition by the Federal League people as to which I at all times said could not be accomplished.

The Court: Were those part of the negotiations which finally culminated in the peace agreement?

The Witness: I would say yes.

Mr. Pepper: Might we say, sir, that it comes within the principle——

The Court: I should rather think it did.

Mr. Marbury: We would object to his testifying to negotiations any further than he has, simply on the ground it is admitted that there was no representative of the Baltimore Club present at any of these.

The Court: I understand that. In view of the fact that Mr.
717 Herrmann is himself a defendant individually here, I think it would be wiser to let all that he claims were steps in this negotiation come out. The jury will understand that these statements made by Mr. Sinclair and these others at these meetings are not to be taken by them as evidence of the truth of what those gentlemen then

said to Mr. Herrmann. They are not admissions by the plaintiff that could bind the plaintiff in any way. With that understanding and with the exception noted, the examination may proceed.

Mr. Pepper: I feel a little embarrassment, may it please the Court, because the difference between things which might be regarded as having a direct relation to the negotiation and those that might be regarded as having very remote relation to it, is not very clean-cut in my mind. I do not want to be in the position of eliciting before the jury matter which when it is in your Honor might not think came within your ruling.

The Court: Would you prefer to go over that subject with Mr. Herrmann first?

Mr. Pepper: I think if you will permit me to withhold pressing that inquiry for the moment, I will go on with the confessedly admissible inquiries as to the 13th and 17th.

The Court: Very well.

Mr. Pepper: If the others become material I will take them up.

The witness further testified that he attended the meeting of the club owners of the National League on the 13th of December. The first meeting was held on that day at the National League office, and it was a meeting only of the National League. Were there
718 convening that week at the annual meeting. During the meeting, or just before it convened, Governor Tener said Gilmore and Sinclair were anxious to appear and take up the question of some amicable arrangement. They did appear and "in a general way discussed what happened that led up to the signing of the tentative agreement on the evening of that day at the Republican Club." Mr. Sinclair stated in positive terms that they were not there with power to act, but would get power in the next three or four days by calling a meeting of the managers of the Federal League. This statement was repeated at the night meeting when the tentative agreement was drawn up. Governor Tenor drew up the tentative agreement, and witness was in conference with him and they tried to express in the language used that the provisions made with relation to Chicago, Brooklyn and Pittsburgh were subject to the approval of the American League, which was then in session in Chicago at their annual meeting and knew nothing of this arrangement. The parties to this conference were Gilmore, Sinclair and all of the National League Club owners. Mr. Hempstead may not have been at the Republican Club while the matter was under discussion, but thinks he came in later on. The tentative agreement was not intended to be a final adjustment. At the meeting Gilmore and Sinclair took up the various propositions pertaining to all of the Federal League clubs. It was suggested that in so far as Brooklyn was concerned that an agreement be entered into such as was included in the tentative agreement, and not including any lease or rental proposition. It was also suggested and included in the tentative agreement that if the American League should agree to it
$50,000 should be paid to the Pittsburgh club. It was fur-
719 ther agreed, and this pertained to the National League only, that if the Chicago Federal League Club could secure the Chi-

cago National League franchise, the National League would pay $50,000 towards the purchase. This was done because the National League owners previously discussed the advisability of having new owners in Chicago. The then owner in Chicago was not thought to be for the best interests of the game, and it was thought that if new people could take hold there the National League was ready to pay $50,000 toward that expense, whether the new people were of the Federal League, or others. Governor Tener had come to Cincinnati on several occasions to try to negotiate the purchase or sale of the Chicago club along those lines. The Newark situation was not touched upon at the conference. We were told that the Buffalo and Kansas City clubs had gone out of business; their franchises forfeited; that they were bankrupt, and not much attention need be paid to them; that that could be given further consideration if the American League decided to cooperate, and at the time when the final agreement was to be drawn up. Gilmore and Sinclair did not know what could be done about Baltimore, but advanced the proposition of securing for them a major league franchise, stating that no doubt the Baltimore representatives would want to be heard on that proposition, and also that they were without power to act at that time. Gilmore and Sinclair said they would get power previous to the time we were to meet later on in New York. Then agreed at the meeting on the evening of December 13th to send a representative of the National League to Chicago to inform the American League what was done,
and ask them to appoint a committee to join in a conference
720 to meet with us later in the week, when we expected the Federal League would be present, and at which time we believed everybody that was there to represent the Federal League would have full authority to act. In accordance with this arrangement, Mr. Dreyfuss of the Pittsburgh club went to Chicago, and subsequently representatives of both the American and National Leagues met in conference on the evening of December 17th at the Waldorf. Previous to this meeting, witness received a call about 3 or 4 o'clock in the afternoon of the 17th from Mr. Sinclair, who stated that they had had a meeting of the Board of Managers of the Federal League; that a committee had been appointed with full power to act, to negotiate peace; that Rasin would accompany with committee, which he then named, and that before that committee attended the joint conference they were anxious to talk to witness about securing a major league franchise for the city of Baltimore. Several of the Baltimore club officials then came to see witness in his room at the Waldorf—Hanlon, Janney and Rasin. They had a very pleasant talk, and one of them told him what had happened, stating that a committee had been appointed at the meeting of the managers of the Federal League with full power to act, to meet a similar committee of the American and National Leagues and the National Commission in joint conference that evening; that Gilmore, Sinclair and Weeghman were named as the members of this committee, and that Rasin would also accompany the committee. Witness believes Hanlon said they were there for the purpose of trying to secure a major league franchise, to which witness replied that

he did not think it was possible, that it meant reconstruction
721 of one or the other of the leagues, that it took unanimous consent to change a circuit which could not be obtained in witness' judgment. Someone then stated that newspapers had reported that possibly the Washington club and franchise was on the market, and then St. Louis situation was suggested. Told them the St. Louis club was in straightened financial circumstances, but even so he did not think there was a possibility of securing major league franchise for them, because it required a unanimous vote, that if a St. Louis club was moved to Baltimore, it would make a change in the circuit, making five clubs in the east and three in the west, which would be inadvisable. Also told them Washington franchise matter had come up in October in Philadelphia, when it was proposed to have a ten club circuit, and that this was impossible because of inconvenience in arranging a schedule. They insisted, however, that they be given an opportunity to bring the matter up in the joint conference to be held that evening, and witness stated that he would be glad to secure for them an opportunity to be heard, that the National and American League committees had at a meeting that afternoon agreed to proceed along the lines of the tentative agreement as to Brooklyn, Pittsburgh, and Chicago, and that by resolution the National Commission had been given full power to act for the two major leagues. Then discussed the advisability of securing for the Baltimore club a franchise in the International League, and witness stated that he thought it could be brought about, because the previous International League club in that city had gone to Richmond, and the International League was in bad shape. The great
popular demand for major league franchise in Baltimore was
722 referred to by them at this interview, and they brought in another gentleman representing the Baltimore Sun, who stated the same thing, and witness told them there had been the same popular demand in all the cities of the International League, the Pacific Coast League for some years, and in the American Association, that it was always rejected because there were not enough major league players on the market to supply the demand. They discussed the International League franchise in a general way.

The witness further testified that the Waldorf conference took place the same evening, at which witness presided as he had also in the afternoon. The Federal League was represented by Gilmore, Sinclair, Weeghman and Rasin. There were also present all the club owners of the National League, and probably some of the clubs were represented by two or three people—New York by Lloyd, Hempstead and Foster. When the meeting was called to order Weeghman was not present but came in later, though witness is not positive as to this. President Tener was there, and President Johnson, and the Committee representing the American League. The meeting was opened, and one of the first things witness asked Gilmore was whether they then had full power to act, and he stated that they did. Asked him this question several times during a running conversation, and he always answered in the affirmative, as did Sinclair also. Then stated to them what the American and National committees

had done that afternoon, including their delegation to the Commission of full power to act. Then went over the three provisions of the tentative agreement relative to Brooklyn, Pittsburgh and Chicago, and practically agreed upon that. Sinclair stated he would like to have their attorney and the representative of the Baltimore
723 club come in at that time and talk upon the question of a major league franchise for Baltimore. The meeting took a recess and in a little while Janney came in. He was introduced and at once made a lengthy plea for major league franchise for Baltimore. Then took a vote on it as the best way to settle the matter, and it was unanimously decided by the National League presidents that it could not be done. Then the American League people were called upon, and there was quite a talk between Janney and Comisky, and Johnson and others. They too went on record that it could not be brought about. They did not care to change their circuit; it was not practicable. Comisky was strong in his belief that Baltimore was not a major league city; that they had tried it before. A final conclusion was reached as to the major league proposition for Baltimore. When asked with regard to the steps taken to carry the negotiations further, the witness testified that Janney and Toole got together to see if they couldn't agree on some way of submitting to Judge Landis a proposition to withdraw the Chicago suit, Mr. Toole being a representative of the National League. At the close of the meeting that night a telegram was sent, which seemed to be satisfactory to all, to the attorneys in Chicago, looking towards the withdrawal of the suit. The witness was asked regarding the steps to be taken to complete, in detail, the proposed agreement, and he replied that the National Commission agreed with the committee representing, as they thought, the Federal League, to have another meeting on the following morning, which was held. Nothing was said during the proceedings to the effect that the three gentlemen represent-
ing the Federal League were without authority to act, because
724 if they had been without such authority, and we had known it, we would not have gone on, because that is the very first thing witness made inquiry about. Is quite sure Rasin was present throughout the meeting. Does not believe he took part in the discussion. May have asked a question or two, but witness does not think he did. The National Commission and the Federal League committee met the following morning at the Waldorf—morning of 18th. The first thing was to carry out more of the details pertaining to the Buffalo, Baltimore, Newark and St. Louis situations. Nothing had been done on any of these propositions up to that time. They were all subject to further negotiations. Did not reach any conclusions on these points, but decided to meet again in Cincinnati about December 22nd and in the meantime get such information as was obtainable with respect to placing an International League Club in Baltimore, and try to arrange the situation in Buffalo. Mr. Lannan was there that morning, representing the Buffalo International League club, and witness believes he asked Mr. Barrow, the president of that league, to attend that morning meeting with a

view to taking up with him at once the question of securing a franchise for Baltimore in the International League, which witness did. In these negotiations, the National Commission was trying to re-establish the game which, in witness' judgment, had deteriorated. Contracts had been violated and discipline could not be maintained among the players. "We wanted to protect, naturally, our property rights." Witness had only one thing in mind, to re-establish public confidence in the game, to protect the interests of the players, to throw all safeguards around the game, to protect the owner—and never having in mind any fear of competition, because he
725 had repeatedly expressed himself publicly and otherwise along different channels.

Thereupon the witness' attention was called to the charge in the declaration that he had conspired to disrupt the Federal League to the damage of Baltimore, and he was asked what, if anything, was done which could be so described, and he stated that he knew of nothing, that he was not conspiring with anybody—that on the contrary he was trying to help re-establish peace; that he was rather inclined to help the Federal League, if he could, instead of doing anything to destroy it, that he had always been in favor of peace, against the proposition of contract jumping and things of that kind. Witness and others did nothing whatever to affect injuriously the interests of Baltimore. Had it in mind to help Baltimore if they could, by giving them what they thought finally would be satisfactory, namely, an International League franchise.

The witness further testified that the peace agreement was finally concluded in Cincinnati. In the discussion had at that meeting of the Baltimore situation, Sinclair and Gilmore made it appear to witness that if Baltimore could secure a franchise in the International League it would be satisfactory to them. At that conference the Newark situation was taken up for the first time. Having in mind what he thought would be satisfactory to Baltimore, witness proposed that Mr. Borrow be the seventh member of the committee, because he had attended the meeting in New York on the morning of the 18th, was president of the International League, and probably could aid more than anyone else in bringing about a conclusion that witness thought would be satisfactory to Baltimore. The committee was to be composed of the National Commission, three Fed-
726 eral League people, and Mr. Borrow. It was from Mr. Gilmore's statement at the meeting on December 22 that witness learned of the telephone conversation between him and the Baltimore representatives to which Mr. Gilmore has testified. A subsequent meeting was held in Cincinnati, about the 5th of January, 1916, when witness was made aware of the fact that the Baltimore people were not satisfied. He had thought everything was going along smoothly. Mr. Janney was in Cincinnati at that time and Mr. Goldman, but neither one came to the meeting, and that in itself indicated to witness that probably they were dissatisfied with something or other. Had a talk with them at that time and went into the question of an International League franchise again, and told them it had not been finally adjusted and that everybody wanted to

do what was right and fair, that probably there would be another meeting in the east in the near future, and that witness might stop in Baltimore on his way east and confer about the matter.

The witness further testified that in pursuance of the peace agreement, the National League paid $50,000 to Sinclair and to Weeghman as part of the purchase price of the "Cubs." Then the Chicago National Club was moved from West Side grounds to the North Side grounds which had a new stand, though a small one, the stand at the West Side grounds being old and dilapidated, and probably unsafe. Were ready to make the payments, not including the rental, to Brooklyn, and at the time of the first payment, after withdrawal of the suit in Philadelphia, the question arose whether or not Organized Baseball was liable also for the rental there. Witness contended that it was not, that the agreement provided for the
727 payment to be made, and nothing else. An opportunity presented itself to dispose of the Brooklyn Federal League lease for $10,000. The Government wanted to take possession for storage purposes. Tried to get Newark International League club to use the Newark Federal League park for baseball purposes, at a nominal rental, which they refused to do because it was too far from Newark. Have rented it for miscellaneous purposes, and contemplate using it for baseball during the coming season. Intended to do so last year, but for some protest from the International League in connection with the Sunday game question. Imagines plant at Pittsburgh was not dismantled; it fell down. A new plant was built at Forbes field. The old park was flooded almost every spring. The Baltimore plant was taken over by Dunn of the International League. There was a consolidation in St. Louis. The Kansas City and Buffalo plants had gone out of existence at the time of the peace compact. In witness' judgment, the Baltimore players, with the exception of one man, had no value at that time, because we gave all the Federal League clubs an opportunity to dispose of their players that had any value, and they did so. Baltimore Club had a class of players that no one wanted, and it notified its players to seek employment elsewhere. Some of the players so notified the Commission, and asked what their status was. They were told they were eligible to play with any club under the National Agreement, with whom they could get employment. The asset of the players was not anything.

In witness' judgment, the Baltimore franchise was not worth a single dollar. Has had a great deal of experience in dealing with franchises, and in estimating their value. At the time,
728 Baltimore Club had no circuit, and no clubs and no players of high caliber. Their overhead was too great. There were no cities that were drawing, and for that reason their franchise was absolutely valueless. Does not think that Chicago Federals had considerable attendance for the expense that they went to. Knows what the Federal League officials of various clubs told him, and what their attendance was elsewhere, with the possible exception of Baltimore. Never knew what they did there. In valuing a franchise, the first element is the league itself. Another element is the circuit, also the clubs, the players and what their drawing powers are.

All these things are important factors. It is possible to value the franchise of a club as a separate entity without regard to its relationship to the other clubs in the league, but witness would not do so.

The importance of the league is that it is an established institution, one that the public has confidence in, that is conducted on good business principles, that is giving the public a high standard of baseball, that has dealt fairly with the players. If one has a franchise in a league where admittedly two clubs have gone into bankruptcy, and other clubs on the ragged edge, their overhead a burden, with no attendance, witness would figure a franchise there of no value. It would rather be a liability than an asset. Witness thinks it impossible to play baseball effectively without a league, and a league cannot hold together without some form of reservation of players under contracts with individual clubs.

The witness further testified that the statement of the objects of the National Agreement, as expressed in it, is an accurate
729 statement, and that the averments contained in the declaration to the effect that the objects so stated are pretenses, shams, etc., are absolutely incorrect.

The witness further testified that he examined the statement of accounts of plaintiff club and that the statement of operating receipts and expenses, shows that in the year from November 20, 1913, to November 30, 1914, the operating income was $80,204.32, of which $59,500.63 was income at home, $20,302.79 on the road, $205.90 having been paid for season tickets, and $194 for season boxes. Comparing this with receipts of the Cincinnati club, it would indicate, with respect to the soundness of the plaintiff's organization as a business venture, that the receipts at home were about 50 per cent of what they should be to maintain the club on an even break, and about 33 per cent or less of what they should have been on the road. Attendance was difficult to calculate from these figures. The account shows that in 1914 there was a loss of $35,103.66. The salary list for that year aggregated $72,466, which is less by $20,000 to $25,000 than the average salary lists of major league clubs. In 1918, when the salary question was discussed in Chicago, the amount was stated from $85,000 to $130,000. In 1915, the Baltimore club's receipts at home dropped to $34,742, the receipts abroad increased to $23,769; the season boxes brought $255, special tickets $86.35, making a total of $58,800, as against $80,200 in 1914. The second year shows a profit and loss gross deficit of $72,652.70, which is offset by income and profit and loss credits of $43,415.14, making
730 a profit and loss deficit, according to their statement, of $29,239.50, although under the head of income and profit and loss credits there is a credit of "Valuation of development and good will, $35,103.66," which was the deficit of the year before. The profit and loss gross deficit for 1914 and 1915 seasons was $72,654, which should be reduced to about $65,000 by charging off for concessions $4,263.99, exhibition games, $1,016, fines, $616, score book privileges $1,200, and sale of players $1,000. The statement as a whole for the two years shows a loss of approximately $100,000.

The witness further testified that outside of the amateurs Organized Baseball took in practically all the baseball players of the

country. There have been independent leagues in the past—the Tri-State League, the Pacific Coast League, and the league which preceded the Federal League, known as the United States League. Between 1903 and 1913 there were outside of Organized Baseball semi-professionals in any number besides the leagues referred to, and then there were independent leagues operated in various parts of the country. In Cincinnati there was the K. I. O. League, and there were several preceding that. They played two or three times a week, always on Saturday and Sunday, had a circuit and paid the players, but were not in Organized Baseball.

The witness further testified that the proportion of major league players who left Organized Baseball to go to the Federal League was very small.

On cross-examination the witness testified that among the independent leagues mentioned very few could be found capable
731 of playing major league baseball. As a rule the players of those leagues probably engage in some other business and play ball on Saturdays and Sundays. They did play baseball for a living and to a certain extent had other occupations besides that of playing ball. They are not strictly speaking professional baseball players. Before the organization of the Federal League the demand for professional baseball players, especially major league players, was greater than the supply. Witness does not believe that all men of major league caliber were in the service of Organized Baseball. There are quite a number of such players who were not in Organized Baseball, including Yingling, former pitcher of the Washington club, who plays in the league around Cincinnati,—a semi-professional league and not under the National Agreement. It is not true that before the Federal League was organized all baseball players actually playing for a living regularly were in the service of Organized baseball. There was the United States League the year previous to the Federal League. When the Federal League came into the field the United States League was dead. At the beginning of 1914, outside of those players already referred to in the semi-professional leagues, all professional baseball players actually engaged in the game for a living were in the service of Organized Baseball, so far as we had knowledge. Witness is chairman of the National Commission, which he has been since it was organized 15 years ago, and exercised the authority conferred upon him by the constitution and regulations. For some time has been president of the Cincinnati Baseball Club. Mr. Johnson has been a member of the National Commission since the National Agreement was adopted.
At that time Pulliam, the first president of the National
732 League, was also a member of the Commission, and he was succeeded by Mr. Heydler. Mr. Heydler by Mr. Lynch, Mr. Lynch by Governor Tener, and Governor Tener by Mr. Heydler. Governor Tener became a member of the Commission in 1912 or 1913 and was on the commission at the time the Federal League was organized. Witness has stated that neither the American nor the National League was organized for profit. Each League is composed of eight clubs, each of which governs its own internal affairs,

The control of the National Commission over the league is defined in the agreement itself. The leagues through their presidents arrange the schedules, and the past season the club members themselves passed upon the number of games to be played. Baseball went out of commission on account of the war, and a shorter schedule was decided upon. The schedules for the two major leagues are fixed by the presidents under the provisions of the National Agreement and not by the central organization, as was the case in the Federal League. The clubs are required to travel from city to city to carry out their schedules every season. Imagines clubs of the American League are operated for profit, which is made out of gate money. Assumes that salaries are paid their presidents, one of whom witness is at a very nominal salary. Witness is a stockholder in the Cincinnati club and receives a salary as chairman of the commission amounting at the present time to probably $7,500. The average since the organization has been $5,200 a year. Is not positive that all league presidents have salaries, imagines so. Mr. Johnson is not president of one of the league clubs, but is president of the American League. Imagines he draws a salary, but is not positive. Clubs and officers were engaged in the
733 enterprise for profit. Thinks Governor Tener received $60,000 for four years as president of the National League. He was inactive the first year when he was governor of Pennsylvania.

Witness further testified that his impression two years ago was there were eight or ten thousand ball players, but after dismissal of the suit in Philadelphia he ascertained there were only 5,800, the greatest number the National Association ever had, and the greatest number of minor leagues at any time was 38.

Q. You stated in your testimony at Philadelphia, did you not, that, "At present I should judge there are about 6,000. We had as many as 8,000 or 10,000 a few years ago." Is that correct? A. If that is the record, I made that statement, and I was under that impression, yes, sir.

Witness testified in the Philadelphia suit, and so stated in this trial, that one of the reasons for the reduction in the number of players was the entrance of the Federal League taking players from the minor leagues without compensation and disrupting the leagues.

Mr. Marbury: Then the competition of the Federal League was beginning to be felt a little by organized ball before the Federal League was put to death, was it not? A. Not in my judgment.

Q. If the effect of the competition was to take a great many players away from minor leagues, which were part of organized ball, how can you say that competition did not affect organized ball? A. I am quite sure I qualified that statement by saying that the effect was to take the minor league players, without drafting or buying them, and through that——

Q. It cannot be——

The Court: He has not finished.

A. (Continuing:) —and for that reason the minors could
734 not exist any longer. Previous to that time the major league clubs had been drafting and purchasing players from the minor leagues, and when that revenue was taken away from the minors, they could not exist any longer, because the Federal League was taking minor league players without compensating minor league clubs. I believe that was my testimony in Philadelphia, along those lines.

Q. Then the effect of the competition was to break up some of your minor leagues, was it not? A. I do not know what they had in mind.

Q. Do you still adhere to the statement you have made several times that you did not care anything about this competition of the Federal League, that it did not do you any harm? A. I never cared anything about it. I did not look upon it as competition. All I was interested in was not to have our players violate their contracts.

Q. You did care about it to this extent, that you did not want the Federal League clubs to get any of the players from organized ball that you needed there, did you? A. I was not interested in it.

Q. What do you mean by saying you were not interested in it? A. We were getting all those we could get, by draft and purchase. If you call that competition, taking their players away without compensation, I would say yes. But that is not the reason I explained why the number of players lessened in the minor leagues, and why the leagues had been reduced in number.

Q. I do not understand your language, Mr. Herrmann.
735 A. I will try to explain it. I tried to say that the reason there were less players employed by the minor leagues as a whole, and a less number of leagues, was on account of the fact that the Federal League was taking their players and not compensating the clubs for them.

Q. Then the Federal League competition was affecting organized ball, in that way? A. If you call that competition, my answer would be yes.

Q. Of course, the minor leagues did not own these people as if they were property, or horses, or mules, or anything like that. Why should not the Federal League bid for their services if they wanted to? A. I was under the impression that when a minor league club paid a player a certain stipulated sum for the right of reservation, they had a right to retain that player's services.

Q. How long? A. Until he signed another contract.

Q. Suppose he did not want to sign another contract, could not agree on terms? A. That was up to the player.

Q. Then what happened to him? A. That would end it.

Q. If that were the case, why would not the Federal League be at perfect liberty to come and employ that same player? A. I would say that they would be, and have a perfect right and did have.

736 Q. They did? A. They did.

Q. Except that when they did it, you warned that player that he was put on the ineligible list, and would never be permitted

to play for any club in organized ball again, unless he got the consent of your commission. That is true, is it not? A. I never gave any such warning, no, sir.

Q. As a matter of fact, that is exactly what you did, though, you blacklisted all the men who joined the Federal League, did you not? A. I did not. No man was ever blacklisted.

Q. Did you not put every one of them on the ineligible list? A. Some of the clubs did, others did not. A player who did fail to report to his club, or a player who violated his contract was automatically suspended under the rules of the National Commission.

Q. What do you mean by "automatically suspended?" A. The rules themselves provide that a player who fails to report to a club that is entitled to his reservation, or a player who violates his contract, will be placed upon the ineligible list until such time as he is reinstated.

Q. Mr. Herrmann, in the peace agreement, so called, of December 22, 1915, which was entered into between the representatives of organized ball, including yourself as first signer, and Mr. Gilmore and Mr. Sinclair, representing, or purporting to represent, the Federal League, which terminated the competition between organized
737 ball and the *the* Federal League, I noticed this provision, which appears on page 80 of the Philadelphia Record:

"All baseball players, managers and umpires heretofore or now under contract, reserve, extension or option with any of the constituent members of the Federal League, or said Federal League are hereby agreed to be eligible to play in any club operating under the National Agreement, and the said players, managers and umpires and the contracts existing between said Federal League or its constituent members and such players, managers and umpires shall be recognized and respected by the National and American Leagues and all Leagues subject to the National Agreement. A full and complete list of said players, managers and umpires is hereto attached and marked Exhibit "A". I take it from that agreement, Mr. Herrmann, that prior to the signing of this agreement, those Federal League players were not eligible to play with any organized ball clubs. Is that correct? A. They were not until reinstated. I thought I so stated. In other words, so as not to be misunderstood, players in some instances were placed upon the ineligible list for failing to report to their clubs, or having left the service of the club and then again for violating their contracts.

Q. But this agreement seems to provide that all baseball players, managers, and so on, "now under contract * * * with any of the constituent members of the Federal League, or said Federal League, are hereby agreed to be eligible.". A. Yes, sir, including all players.

738 The Court: They would all be eligible from that time on? Were they all ineligible before?

The Witness: All of them were not promulgated as such, but I would hold that under our rules they were all ineligible if they failed to fulfill their contracts. I tried to make a distinction between

player who violated his contract and one who was on the reserve list only.

By Mr. Marbury:

Q. In that connection, Mr. Herrmann, I call your attention to your testimony of Friday, appearing on page 1402 of the testimony in this case, reading as follows:

"Q. Then what consequence or penalty ensues to a player if he violates his reserve clause? "A. If a player fails to report, under our rules he is automatically suspended. If a player fails to report and goes to a club, what has been termed in this case a club the member of an outlaw league, he is also suspended and placed on an ineligible list. But an outlaw league was construed as a league at all times which has player violate his contract."

"Q. State whether or not the mere fact that a league was not included in the combination known as 'organized ball' made it an outlaw in your terminology? "A. It did not.

"Q. What was necessary in order that a club or league might be termed an outlaw? "A. Just what is provided for in the agreement and our rules. If a league or club harbors a player who has violated his contract.

"Q. State whether or not that was applicable to one who
739 merely jumped his reserve clause? "A. It was not."

—. I understand from this that you say that any player who failed to report at the end of his term of service, and went to what you regarded, what organized ball chose to regard, as being an outlaw league, that is, a league—let me see if I have it right—or goes to an outlaw club, that is to say, a club that is a member of an outlaw league; that he is put on the ineligible list. Within the purposes of that rule, did you regard the Federal League of professional baseball players as an outlaw league? A. In so far as it pertained to players that they had, who had violated their contracts with our clubs, yes.

Q. Did you regard the Baltimore club as an outlaw club? A. I did not, as a club, no. Let me qualify that. I am quite sure we did not, because I do not believe a condition of the kind existed on that club.

Q. It did not? A. No.

Q. But did you not render ineligible, and put on your ineligible list, every baseball player of organized ball who accepted employment with the Baltimore Baseball Club? A. I told you that I do not believe an ineligible list of that kind was ever published. But that is the intent of our rules, that a player automatically goes on the ineligible list.

Q. That is all. I just wanted to know if I had you correct. A.
And as I stated before, there is a distinction between one who
740 fails to report, who does not respect his reserve clause, and one who violates his contract.

Q. You mean in court? A. Or anywhere else.

The Court: He has already said that they were on the ineligible list.

By Mr. Marbury:

Q. Will you please explain a little more fully what is meant by being on the ineligible list? A. A player not carrying out his contractual obligations, so to speak, and is automatically placed on the ineligible list until he applies for reinstatement.

Q. What is the effect of a player being on the ineligible list? A. I cannot tell you that.

Q. What is the difference between this ineligible list and an ordinary blacklist? A. A blacklist, I have always understood, in my life to mean somebody you did not want to take back in your employment, or something of that kind.

Q. Can you tell us any difference between this ineligible list of yours and any ordinary blacklist of the kind you are speaking of? A. Yes, sir, because the ineligible list we had, ordinarily the player filed an application for reinstatement, which would be granted at once.

Q. Always granted? A. I do not know of any instance to the contrary.

Q. It depended on your decision, or your will, that is, yours and your two colleagues on the Commission, whether a major league player would be permitted to come back into organized ball, did it not? A. I do not know of a case to the contrary.

741 Q. Do not let me misunderstand you. A. It depended on our decision, yes. And I do not know of a single case where an application for reinstatement was filed and it was not granted.

Q. I am not talking about what you did. You may have been very gracious to them, but, as a matter of fact, when once a man was on the ineligible list, no club in organized baseball, that is to say, no club in the United States, before the Federal League came in, engaged in furnishing baseball exhibitions as a professional matter, would be permitted to even negotiate with him for his services, would it? A. That is correct, because we agreed among ourselves to respect the reservation clause of each other's clubs, which we thought was necessary to maintain the game.

Q. Then, before the Federal League was formed, if a man could not come to an agreement with the club that had employed him the year before, and they could not come to terms as to salary, he was on the ineligible list for that reason, was he not? A. He first had the opportunity to have his salary adjusted to appeal to the Commission, if a major league player, and an appeal to the National Board, if a minor league player; with an appeal from that Board to the Commission.

Q. Suppose that the Commission finally decided that he should take a salary, and he was not willing to accept that salary. What then? A. You ask me to answer that on the supposition?

742 Q. Yes. A. That would end it.

Q. What do you mean by "end it?" A. The clubs would then respect the reserve list between themselves, and he would have to seek employment elsewhere if he cared to remain in the game.

Q. He would have to give up playing professional baseball for a

living, would he not? A. Probably so. That might have been the effect.

Q. Was not that the effect, the necessary effect? A. It is not a condition that we try to create. We try to prevent it at all times and did prevent it.

Q. I think that we are entitled to a very definite statement from you, if you will pardon me, on that subject. The consequence that——

The Court: When he has said that would end it, so far as playing professional baseball is concerned—you can put it in your own way, but I do not think you are entitled to have the witness adopt your language. He has given the point.

By Mr. Marbury:

Q. These tribunals to whom the player had the privilege of appealing in case the salary offered to him by his club was not satisfactory to him, consisted of, in the minor leagues, the National Board of arbitration? A. Yes.

Q. They were all organized baseball men, where they not? A. Yes, sir.

Q. There were not any representatives of the players on
743 that Board, were there? A. No, sir.

Q. They were all representatives of the employers of players, were they not? A. Yes, sir.

Q. Men who were selling players as part of their business? A. Yes, sir.

Q. Then he might appeal to another tribunal, that is, the National Commission, of which you are chief? A. Yes, sir.

Q. Did the players have any representation on that Commission? A. They did not. They did not want it and they were the ones who proposed the rule.

Q. I am only asking you the fact. A. That is the fact.

Q. They did not have any representation. And you and your colleagues were representatives of organized ball alone? A. Yes. The rules existing today pertaining to how salary questions can be submitted by the players were proposed by the Players' Fraternity, a committee representing the players, and were adopted at their request, and we thought that was satisfactory to all concerned.

Q. I read from page 1392, the bottom of the page, your testimony given on Friday, Mr. Herrmann:

"(By Mr. Pepper:)

"Q. Referring again to this reserve clause which you have explained, and to this system of draft and waiver, will you tell the court and jury to what extent, if any, the clubs in organized ball
744 have been accustomed to sign up and hold more players than they need for their actual club purposes."

And I will read your answer to that question. You say:

"A. Under the rules of the Commission we will not permit them

to do so. The reserving of players is simply to protect the clubs owning rights to those players, instead of having piracy among your clubs, as we did in 1902. In other words, if at the end of each year, you were to go out and get players again in the open market, the players would all go to the one club, the club drawing the greatest patronage, having the largest cities, instead of going to the club which had originally drafted or purchased and developed the player. It is not to monopolize the player market, but rather to limit it to an extent that no club can have more players on its reservation list than those actually needed for its own purposes."

I understood you to state the other day that the demand for professional baseball players in the United States was greater than the supply before the Federal League formed. Is that correct? A. That is correct.

Q. It also appears from your testimony that all the professional baseball players in the country who were making a living by that profession were already in the service of organized ball. That is also true, is it not? A. Yes.

Q. What this means, then, is that you did not take any more than you wanted?

A. No, we did not want the clubs in the respective leagues to take any more than they needed, so every club could have an
745 opportunity to secure them. In other words, I contended that the demand is greater than the supply, and if one club was permitted to corner the market in players, they would get all the desirable players, and other clubs would not have enough.

Q. I understand that part of it. A. That is why the player limitation rule was adopted.

Q. I understand that part of it. That was a great convenience, no doubt, to have a system which would enable you to control all that. But what do you mean by saying it does not monopolize the player market to do this, when, in point of fact, you have monopolized it, and got all the players there are so that nobody who comes into the field can get any, except they are your clubs. A. I do not agree with that.

By Mr. Marbury:

Q. Then I understand, Mr. Herrmann, that what you mean when you say you were not trying to monopolize the market is that no club in organized ball was permitted to keep any more players on its reservation list than those actually needed for its own purposes? A. Yes, sir; and that was not the case previous to the adoption of player limitation rule.

Q. That is what you mean by saying that there was no monopoly? A. Oh, no. What I say is, first, that we had in mind not to have any club carry on its reserve list any more players than were actually needed for the proper conduct of that club.

Q. What became of the players that were left over? A.
746 If the club could not carry them they would be disposed of, or give them their release, dispose of them to other clubs

under the waiver rule, in the same classifications or lower, or release them outright, which was done.

Q. I understand your purpose in making that rule that a club should not keep any more players on the reserve list than they needed for its own games was to keep one club from getting more than its share A. Not only one, but the eight clubs.

Q. Any one of them. A. In other words, we did not want the maximum of the eight clubs to exceed a certain amount, did not care to get players in excess of an amount.

Q. In other words, it was to make sure that these players should be distributed among the various clubs of your league equitably? A. No, not distributed; but held by the various clubs of the league that had secured them by drafting purposes or had developed them in their profession.

Q. It is the same thing, to an extent. A. No, it is not. If the players whom you compensated for reservation at the end of each season was permitted to go to any club they wanted to in that particular league, it would not be the same thing. One club would have all, and others would have nothing.

Q. In the testimony on page 1444 of this record your counsel asked you this question.

"Q. What were you and your associates on the National Commission trying to accomplish at this series of negotiations? What was the end in view?"

747 Your answer is:

"A. We were trying to reestablish the game. In my judgment the game had deteriorated, contracts were violated, you could not maintain discipline among your players. We wanted to protect, naturally, our property rights."

When you made this peace agreement, Mr. Herrmann—and when I say "you" I mean organized ball, of which you are the representative, these defendants—when you made this peace agreement of December, 1915, under which you acquired all the baseball parks and other properties of the various members of the Federal League other than the Baltimore Club, the natural effect of your doing so would be, as you knew, I suppose, did you not, to eliminate the last competitor from the field of professional baseball, which organized ball had? A. I never looked upon them as a real competitor. We had in mind to do those things, as my answer was to your question on Friday, restore the game to its normal condition, again establish discipline, and also thought we were doing that which they all desired.

Q. I understand. That is not the question that I asked you. I do not dispute the fact that your motive may have been as virtuous as you please, but you knew that the effect of what you were doing in making that agreement would be to destroy the Federal League, did you not? A. No, sir. I felt the Federal League was destroyed then.

Q. If you felt it was destroyed, why did you make the agreement? A. To reestablish peace, to bring about these normal conditions,

and again I thought in certain instances we were helping
748 ourselves, particularly so in Chicago.

Q. Why was it necessary to destroy the Federal League in order to establish peace if the Federal League was already dead? A. I felt that they were dead, or on their last legs. They pointed out to us that two of their franchises had been forfeited, the Baltimore Club—or the Indianapolis Club; had gone out of existence, their franchise transferred. They told us what was being done. I was the one who proposed to have some compensation, to give them something out of the wreck, so to speak, and reestablish the game. I said, "You can go ahead and probably continue this fight in violation of these contracts"——

Mr. Marbury (to the reporter): Please read the question.

(The stenographer repeated the pending question as follows:)

"Q. Why was it necessary to destroy the Federal League in order to establish peace if the Federal League was already dead?"

By Mr. Marbury:

Q. Do you want to make any other answer? A. No, I do not.

Q. If the Federal League was already dead, why did you pay a million dollars, nearly, to get it out of existence? A. We did not pay any such sum.

Q. How much did you pay? A. The agreement speaks for itself. We agreed to pay the Ward estate $20,000 a year for twenty years. $50,000 in Pittsburgh; $50,000 towards the purchase of the Cubs
and as I explained to you the other day, we were ready to
749 do that whether the Federal League was doing business or not. We wanted to get rid of an undesirable club owner. And then we agreed to pay Mr. Sinclair, at Newark, $10,000 a year for ten years.

Q. And taxes? A. Yes.

Q. And repairs? A. Sir? Taxes and repairs at Newark, yes. And also had in mind to put an International League club, to secure an International League club for Baltimore, and having in mind the consolidation at St. Louis.

Q. Did not those payments that you obligated yourselves to make under that agreement aggregate nearly a million dollars? A. They do not.

Q. How much? A. $400,000 to Brooklyn.

Q. Can you not remember how much? A. $600,000, in round numbers.

Q. Was not an additional amount of $125,000 paid for players? A. No, sir. Was it paid subsequent to that?

Q. Yes. A. That was an after consideration.

Q. That was part of the price you paid, was it not? A. Yes, sir.

Q. That would run it up to about $750,000, would it not? A. If the price is $129,000, it would be $729,000.

Q. We will not stand on those figures. A. Then we had
750 in mind to get revenue in return. I know when my vote was recorded I thought I was getting off very cheaply, because that much money in twenty years was not near as much money as I was required to spend in one year, when they disrupted the Cincinnati club, or tried to disrupt it.

Q. Then you did pay $729,000? A. We agreed to, yes, including the players.

Q. To a thing which you considered already dead? A. Yes, sir.

Q. Why did you do it? A. As I have told you several times, the game at that time was in a very bad condition, we wanted to reestablish it, wanted to prevent contract jumping, and while we felt that the league was dead and ended, some of their franchises had been forfeited, of course we were not positive as to what might happen. We did not fear competition at all, but we did fear repetition of what had happened before.

Q. How could that happen before without competition? A. I did not term that competition, when they took some of my players who were under contract, salaries fixed by themselves, and had them violate those contracts in mid-season. I did not look upon that as competition, I may be mistaken in my judgment or my construction of that word, or my understanding of it.

Q. Whatever it was, you wanted to destroy it, and you did destroy it by that peace agreement, did you not? A. No. I wanted to prevent a repetition of what had occurred.

751 Q. I understand. You wanted to put the Federal League out of existence? A. I did not have that in mind at all.

Q. You did not? A. No.

Q. You knew it would have that effect, did you not? A. I told you I thought they were practically out of business at that time, and I wanted to be sure of it.

The Court: You are just arguing around. You want to get him to adopt your form of language, when the facts are perfectly clear before the jury.

Mr. Marbury: If the facts are clear, that is all right.

The Court: You are not bringing out any new facts. You want him to adopt your form of language.

Plaintiff's counsel then quoted from that portion of the witness' speech at Columbus referring to the millions of dollars that had been put into new plants in Organized Baseball, and the witness testified that by new plants he meant the modern stadiums of concrete and steel; that Organized Baseball was not buying ball parks of the Federal League; that in Chicago there was a dissatisfied owner and an old plant ready to fall down. The Chicago Federal League Park was a new one and probably a better place. Did not buy Federal League ball parks to prevent them from being used for the purpose of having baseball games, but bought the Newark plant for the purpose of possibly playing Sunday ball. Did not play Sunday ball there. The Federal League could not have played in Pittsburgh

much longer; the plant was ready to fall down. Had in mind securing park at Brooklyn and thought also that Baltimore park would be used. Purpose was not to prevent the playing of ball at Federal League parks. Had in mind putting International League in the Brooklyn park, but there was objection to this. The lease was taken off their hands, and witness has always contended that they were not liable for the rental as it was not specified in the
752 agreement. The Government wanted the park for storage purposes. They received from the Ward estate the leasehold and plant. Does not recall the rent of Brooklyn park. Thought Ward estate would pay it up to 1919, and the matter was adjusted by someone else taking it. Did not get anything else from the Ward estate. Paid $50,000 for the Pittsburgh franchise and suppose this was all that Pittsburgh club had. It did not include the purchase of any players, and witness imagines that they did not have any other property rights.

Q. Now, Mr. Herrmann, regarding this question of monopoly, I want to get that as clear as possible. When the Federal League was formed and the Baltimore baseball club went into the market to get players was it possible for them to find any players competent to play major league baseball except among the clubs of organized ball? A. Was it possible?

Q. Yes; were there any in existence in America? A. Yes.

Q. Where? A. Why, among the college teams, the semi-pro teams and other places, along the lines that Mr. Goldman testified to when he was on the stand.

Q. Yes, but there were no men actually engaged in making a living by playing professional baseball who could be had for the Federal League at that time, were there? A. None except——

753 The Court: He has already covered that, those that were already in the business. He admitted that.

By Mr. Marbury:

Q. I thought I understood you to say that the Federal League could have bought players from minor leagues? A. There was not any rule against it at that time nor has there been one against it since, and I so testified in Philadelphia. They could, yes; there was nothing to prevent it.

Q. Provided they paid the price the minor league demanded? A. Certainly.

Q. You say there is nothing in your constitution? Is there not a provision in your constitution which forbids the minor leagues—I mean in the constitution of the minor Leagues of the National Association which forbids any minor league club to enter into negotiations even of any kind with a club such as the Federal League club was? A. There is positively no such provision—at least I know of none. They have got an agreement of some kind but I have not read it for some time. I believe there is——

Q. Let us see if we can find out what this means. I am reading

from page 323 of the record of this trial from the National Association agreement, that is the constitution of the National Association, which includes all the minor leagues as I understand it; is that right? A. Yes, sir.

Q. Under the heading "Individuals and organizations in conflict with the National Association Agreement"——

"Article 22. Section 1.

"Any club member of any league or association, a party
754 to or identified with the National Association Agreement, that shall enter into any negotiation to become a member of or in any way co-operate with any organization of professional baseball clubs whose existence will in any manner conflict with the letter and spirit of this agreement or the interests of any of the clubs operating under it, shall forthwith forfeit all rights and privileges conferred by this Agreement, said forfeiture to include its membership in any association a party to this Agreement, and all rights of reservation to players reserved during the current or any preceding season. The penalty herein imposed shall be positive and final and shall not be revoked unless by the unanimous consent of the Board or upon appeal by a three-fourths vote of the National Association of Professional Baseball Leagues."

You do not construe that as interfering with the right of a minor league club to enter into negotiations with a Federal League club for the exchange of players or the sale or purchase of players? A. Certainly not, and that is what it says, in my judgment.

Q. I just want to understand what your contention was. A. As I understood it you asked me whether there was a rule against minor leagues selling a player to a club which is not operating under the National Agreement of organized baseball.

Mr. Pepper: And upon the supposition that that was the question your answer would be——

The Witness: There is no rule of that kind.

By Mr. Marbury:

755 Q. I understand; that is what I mean. He stated he does not construe it that way. That is a matter of construction. A. I don't.

Q. We will have to argue it with the Court or the jury. Then Section 2 of that article provides:

"Any officer, manager or player who shall enter into any such negotiations as referred to in section 1 of article 22, or who shall agree or contract to play with any club a member of such organization, shall be declared ineligible and subject to all the disabilities referred to in the preceding section."

By the Court:

Q. Well, as a matter of practice, Mr. Herrmann, had that been done? A. I really don't know in the National Association. In

fact I have not heard this agreement read in quite a number of years.

By Mr. Marbury:

Q. Did you ever hear or know of any instance in which a minor league club sold a player to an outside club not a member of organized ball, which club was engaged in professional baseball, like the Federal League? A. I do.

Q. When was that? A. The Indianapolis American Association club sold Burke to the Pittsburgh Federal League club.

Q. How many cases of that kind have you known? A. Very few, because there were not many leagues outside of organized baseball. There is no rule to have prevented it.

756 Q. I am not talking about the rule; I am talking about what you knew about what actually happened. Let me see if this is a correct statement of the facts regarding that. This is your testimony in the Philadelphia suit in regard to the Burke case:

"My recollection is that there was a suit of some kind brought in Pittsburgh, and then there were adjustments of some kind made. I don't know the details.

"Q. So that organized baseball did try to get that individual back?" A. No, not organized baseball. The interested man felt that the player was going to jump, and he was going to release that man before he jumped—at least that is what he told me over the phone."

That is correct, is it?

A. Yes, that is correct. But I have already stated there was no rule to prevent a condition of that kind occurring.

The witness further testified that he does not recall the circumstances of the Pacific Coast League. That league was in Organized Baseball, got out and then came in again and has stayed in since. The United States League tried to compete with Organized Baseball a little while before the Federal League. Witness is under the impression that the Federal League took it over. The American League came under the Cincinnati pact of 1902 or 1903. Has testified that at the close of the season of 1915 the Baltimore Club franchises were worth nothing, and denies that he ever offered to

757 pay $75,000 for the property of that club. The plaintiff club could have secured players under the same system as Organized Baseball had secured others, those who did not violate their contracts. Asked: "How do you mean"? Witness answered: "I imagine by offering proper inducements to the players who were under reserve." There was no difficulty on account of reserve clause. Their difficulty was due to the fact that the major league clubs were paying extraordinary high salaries. Players were satisfied and could not be secured without big salary inducements. Players hesitated, not because of the reserve clause, but on the question whether they could get a good contract. A player disregarding the reserve clause would be automatically put on the ineligible list, but witness

does not think this would deter player from accepting larger salary than he was receiving. It might deter some from going to the Federal League at the same salary. Same condition would have existed without the reserve clause. Witness does not agree with Mr. Hanlon's testimony that the salary and operating expenses would have decreased if there had been no reserve clause. Rasin's report shows they had mediocre club and a fairly good salary list.

The witness further testified that a free agent is a person who has a right to negotiate his services with anyone that he cares to. New contract was adopted in 1914, and under it a player becomes a free agent if that contract is not renewed. Prior to that year he became a free agent when his contractual obligations had been fulfilled, which depends on the kind of contract. The new contract was adopted previous to operation of Baltimore club. It was put into effect in January, 1914, and player signing it bound himself for one year with a privilege in the club to have him for one year more as to compensation only, but not as to the reserve.

758 Prior to 1913 the salary list of the Cincinnati Club was $85,000 to $90,000. In 1903 it was $70,000, and the salaries have gradually increased since. Sometimes whether salary is high or low depends upon the character of the player and sometimes it does not. Does have to pay higher salary to a high class player than you do to an inferior player. Clubs make many mistakes in these matters. Baltimore paid entirely too much for the class of players it had. Players would not leave employers unless extraordinary inducements were offered them.

On redirect examination the witness testified that he recalls the questions asked him as to appeals by players who failed to accept salaries tendered; that these appeals were very few; that if a club did not pay the salary determined upon by the Commission it would have to give the player his unconditional release, in which event he would be a free agent. It is probable that if Walsh had appealed he would have been allowed a higher salary, and had the club refused he would have become a free agent.

The witness further testified that the money to be paid for Federal League players by Organized Baseball under the peace agreement was not provided for in the tentative agreement. The tentative agreement provided that all Federal League players should become the property of the Federal League, which had the right to dispose of such players. The amount that was to be paid for Federal League players was left entirely to the clubs. Witness' recollection is that they negotiated with Mr. Sinclair, with possibly one exception, who represented the Federal League. Did not have any definite knowledge of what the terms of such negotiations for players were, but was under the impression, as were also his col-

759 leagues, that the money paid was to be pooled and divided among the Federal League clubs. This was not the subject of any stipulation. Witness did not know the Baltimore club was dissatisfied until — day or two after the Cincinnati meeting of about January 5, 1916. The press then reported that Baltimore club was dissatisfied, that club having through a stockholder or a director,

filed a complaint with the United States Attorney General on the ground that what Organized Baseball was doing was in violation of the Sherman Law. On January 11th, Assistant Attorney General Todd held that it was not in violation of the Sherman Law and they went ahead with the details of the peace agreement. Where the money paid for players went witness does not know.

On recross examination the witness testified that he did not know that the Baltimore club had repudiated the peace agreement. Ascertained for the first time that Baltimore was dissatisfied in Cincinnati in January, when Goldman and Janney come to that city, and then subsequently to that when the query was made of the Department of Justice; that he did not receive the letter dated January 3d 1916, written by Janney to witness, until after the meeting in Cincinnati—but in the meantime Janney and Goldman came to Cincinnati,—and no money had been paid under the terms of the agreement of December 22d at the time of the receipt of said letter, but that they apparently went ahead in spite of the letter, having learned what the Assistant Attorney General had said.

Mr. Marbury:

Q. I would like to ask you whether this is correct. I read from page 274 of the Philadelphia record, as follows, from your
760 testimony:

"Q. And if a player is of a high class so that he is worthy of the company in which he is, when he comes to the second year he is given a contract with a reserve in it for the following year, is he not? "A. Yes, sir. He is not required to sign it if he does not want to.

"Q. Supposing he does not sign it; what does he do? "A. As a rule, he has always been anxious to sign, because he is being compensated for reservation.

"Q. And if he does not want to sign, what happens? "A. That ends it. He becomes a free agent.

"Q. Oh, well, would he become a free agent? "A. I would say yes.

"Q. Could he go out and play in any other club in organized ball? "A. If he got employment, yes. There is no rule against it.

"Q. There is no rule against his being employed? "A. We drop them in cases of that kind. Contracts are not always renewed. Some players want to quit the profession of their own volition. We do not carry them on the reservation list then, we carry them on the voluntary retired list.

"Q. But supposing he does not want to quit the profession, but wants to play baseball, but does not want to sign a contract with the reserve clause in it. What happens to him then? "A. He does not sign. He has not got employment with the club he is negotiating with, I suppose.

761 "Q. Could he get employment with any other club in organized baseball? "A. I do not know.

"Q. You know as a matter of fact, Mr. Herrmann, do you not that it would be against the rules? "A. I do not imagine any other

club would take him, because I have always felt, and we all feel, that reservation is absolutely necessary to keep the game alive.

"Q. Certainly, that is true. "A. And we cannot do without it.

"Q. And therefore it is just as I have indicated, that he must sign a contract with the reservation clause in it; is not that true? "A. Yes.

"Q. Otherwise he must quit? "A. In fact, we have a uniform contract. That is the contract we want him to sign."

"— Was that testimony true when you gave it in Philadelphia? A. Positively so, but that is not the question Mr. Pepper asked me.

Mr. Pepper: This is not recross-examination.

The Court: I do not understand that differs at all from the impression he has given the Court and jury in this case. I understood him to admit that a player could not stay in organized ball without signing these contracts containing the reserve clause; that a man is a free agent means he is a free agent to make a contract with any club he could find that would take him but it must be a contract with the reservation clause because that seems to be required. That is what I understood him to say.

Mr. Marbury: That is all right, then.

762 The defendants then called as a witness in their behalf CORNELIUS MCGILLICUDDY, who being first duly sworn, testified on direct examination as follows: That he is called Connie Mack for short and is manager of the American League Philadelphia Club, which position he has occupied for 18 years; that he remembers Clarence Russell, known as "Lefty" Russell, who has testified in behalf of the plaintiff in this case; that in 1909 witness' club purchased Russell from Baltimore International League Club in consideration of money and players, and in the fall Russell pitched a game for Philadelphia and was paid $100. Then offered him salary of $2,400 for the next year, which was more than was usually offered young players, but which he did not accept. The Baltimore Club paid him $250 a month. This offer was made on account of the money they paid for him, and was a larger salary than they would otherwise have paid because of that fact. Signed him for $2,400. His arm became sore in training at Savannah, and in 1911 he started one game, that he took part in two other games. His arm was in very bad shape and he went home. The club paid him his salary in full for 1911, although the player took part in only three games, and witness thought in view of this fact his salary should be reduced for 1912.

The witness thereupon identified, and there was offered and received in evidence, letter from C. Russell to witness, dated September 11, 1911, which reads as follows:

Blue Ridge Summit,
Sept. 11, 1911.

763 Mr. Mack:

DEAR SIR:

Received your letter and was glad to hear from you.

As to my condition I can say that I am feeling good and that old pain that troubled my arm does not bother me any more and cannot tell you how sorry I am that I could not be of any service to you this year but feel confident that it will be all right again next year.

Will close with best regards to all and wish you all the luck in the world. I am

Yours truly,

C. RUSSELL.

c/o General Delivery,
Blue Ridge Summit.

The witness further testified that in addition to the trouble with his arm, the player had tonsilitis, and witness wanted him to see a doctor in Philadelphia about it, which he did. He later signed a contract for $1800 without objection. He went south and was with the club for a month and a half, when he was released to Baltimore, of the International League, and witness was then through with him for all time. The witness has in his experience reduced salaries of but three players, one from $3,000 to $2,500, but at the close of the season gave him $300; another who was paid $4,000 during the season of 1912, although dissipating a good deal during the season and absent for the last six weeks thereof; but the witness' club paid him his salary in full. In the spring of 1913 the player was told that his contract would be only $1,500, but that if he would
764 attend strictly to business the club would do the right thing by him, and at the close of the 1913 season this player was given $4,200, which was $200 more than his original contract. In addition thereto, witness having learned that this player had a mortgage on his home for $2,500, and witness' club having won the World Series, the club presented the player with $2,500 more. The third player whose salary was reduced was Lefty Russell.

On cross-examination there were the following questions and answers:

By Mr. Marbury:

Q. Mr. Pepper asked you whether when a player's contract for the season had expired there was any genuine negotiation between the club and the player for his employment next year. I could not understand exactly what you meant by your answer. He had to negotiate with you, did he not? A. I tried to explain that we usually send our contract but before sending our contract oftentimes we wrote the player and ask him what he thinks——

Q. I understand. A. (Continuing:) He ought to have for his salary, and we may run into him.

Q. Yes. A. And talk it over and ask him what he thinks he ought to have for salary.

Q. Suppose you cannot come to an agreement with him? A. I will tell you. If a player is at all reasonable we come to terms.

Q. But suppose they are not. A. As a rule they are.

Q. But suppose you don't think he is reasonable; suppose
765 you can't agree? A. There are cases of that kind.

Q. What happens? A. We just let him lay there.

Q. Lay where, on the reserve list? A. He is left on the reserve list.

Q. How long? A. Now my experience is this——

Q. How long, how long? A. How long do we let him——

Q. How long does he lay there on the reserve list? A. We reserve our players from year to year.

Q. There is no limit to the time you could reserve him? If there is any limit, what is it? A. As I say, we come to terms with him.

Q. But suppose you don't? A. But I have not had a case of that kind, and if I had a case—I will explain that to you, too. For instance I will try to help you out on this. (Laughter.) For instance I have a player today who has not signed his contract, and who has been with me for two years, and he drew $300 a month. We paid him $1800 for each season. Now this player was in the service, in the war, this last year, and did not play ball. This year I have tendered him a contract for $400 a month, $100 increase, and still that player refuses to sign. Now I think that player is unreasonable.

Q. What is going to happen to him if he continues to refuse to sign? A. I don't know.

Q. He knows, don't he? A. I don't know. I think if he is reasonable he will come with us.

766 Q. But suppose he is unreasonable.

The Court: He knows what he proposes to do but he don't know what the other fellow will do—as I understand it.

The Witness: We want him to come, and if he shows us he is worth that money we will pay it to him.

By Mr. Marbury:

Q. If you have a right to keep him on the reservation list for an indefinite time until he does agree, what is the difference between him and a man who is a peon or a slave? A. Oh, pshaw! I don't like to think that you think a ball player is a slave.

Q. That is what you are making of him, according to my understanding of the law. Suppose this man wanted $10,000——

The Court: The question is whether you are the one who has finally to decide—whether he has anything to say about it.

The Witness: Of course he has to take it, he has to accept it.

By Mr. Marbury:

Q. That is sufficient for my purpose. You say that as a matter of fact these players nearly always finally agree. Is not one of the reasons for that this, that after a man has been in the baseball busi-

ness, that is to say, playing professional baseball for a number of years, it rather unfits him for ordinary labor, does it not? A. I would not say so. I had about——

Q. Wait a minute. Possibly I can make it clearer this way. As a rule if a man has been playing professional baseball for a living steadily for ten years, say, and he is thirty years old, or something like that, he has ordinarily not learned any trade or profes-
767 sion in the meantime, and he hardly knows how to do anything but play baseball, and if he is forced to give up playing baseball it is a very great hardship to him, is it not? A. I would not say so. I think these players are very capable.

Q. But they have got to start all over? A. I would not say they had to start it all over.

Q. How many skilled mechanics have you got among them? A. Just for instance there was about eight or ten of our players that went into the shipyards last fall. They have worked all winter and the bosses tell me that these men are wonderful workers.

Q. I do not dispute that for a minute, but they cannot be a professional—well, that is all.

On re-direct examination the witness was asked what his experience was as to the age limit beyond which a player can not make his living at professional baseball, and he answered that some go as far as forty years of age, and most of them who take care of their money do not have to do anything else afterwards; that he knows a number who are over fifty who keep in the game as managers or scouts, but that probably thirty-five is about the actual average limit of playing utility of a player for the purpose of professional baseball; that the older a player is when giving up the playing of baseball, the better he is to handle business, in witness' opinion. When a player is forty years old he has either made a good deal of money out of baseball and kept it, or else he is capable of
768 going on in different lines of employment.

Byron Bancroft Johnson, one of the defendants, being first duly sworn, testified for the defendants on direct examination as follows: That he is president, secretary and treasurer of the American League, which he has been since its organization about 18 years ago; that the league took the name of American League when it was still a minor organization. It had been previously known as the Old Western League. During 1903 it operated under a peace pact, which continued until September of that year, when the National Agreement was drawn. Previous to that time the organizations playing professional baseball were the National, American and Eastern Leagues, American Association, Southern and Pacific Coast leagues, and probably a score or more leagues of lower grade. The Old Western League was organized in the winter of 1893 at a meeting at Indianapolis. The cities of that league had been without baseball for two years. Continued operations for seven or eight years with occasional changes of territory. Then changed the name when Buffalo and Cleveland came into the circuit, and it was known

as the American League, but was still a minor organization operating under the National Agreement.

The witness further testified that in 1893 baseball was in a very chaotic state. The game gradually improved and the Western League was quite prosperous. Practical ball men were in charge of the clubs. It was in the winter of 1900 that the American League broke with the National League, or rather departed from the National Agreement and became an independent organization. It
769 was originally intended that the American League should occupy vacated territory in Baltimore, Washington, Louisville, and one or two other cities. Although it was proposed that we purchase parks controlled by National League in Baltimore, Washington, Louisville and Cleveland, they were only permitted to do so in Cleveland. Quarreled with the National League, which would not consent to American League occupying Philadelphia, and there is where they split, and instead of going to Buffalo, as intended, the American League built a plant in Boston and established their circuit in Boston, Philadelphia, Baltimore, Washington, Milwaukee, Chicago, Detroit and Cleveland. Up to 1900 there had been a National Agreement to which American and National Leagues were parties and perhaps some other leagues. Then the American League became independent. The first hostile move was made by the National League, which signed some of the American League players, and threatened to establish a league paralleling ours. The American League did not experience much trouble in making headway. Hostilities continued through 1901 and 1902 and in July or August, 1902, a number of players deserted Baltimore, and the league had to take over the property and conduct it until the close of the season. Then debated whether to continue in Baltimore and finally decided to put a club in New York. In the winter of 1902 a committee of the National League suggested that we bury our differences and shape up a working agreement, the purpose of which was to restore order in baseball and establish some sort of an organization that could conduct it in a clean and successful manner. A peace pact was formulated and several months later was superseded by the National Agreement,
770 dated September 11, 1903. Witness then became a member of the National Commission in virtue of his presidency of the American League, and has been such member ever since. The American League is not an organization for profit, but the eight constituent clubs are. The purpose of the American League is to conduct baseball as a sport. The organization makes no profit. Nor is National Commission a profit-making organization. The funds of the American League are derived by ten per cent assessment on 25 cent admissions. The fund which results is not made subject of distribution by way of dividends. It accumulates from year to year. "There was a time that we did divide that money among the eight clubs in equal parts, but not in proportion to their original assessment." Clubs in the larger cities stand the brunt of the expenses. "For example, a club that is particularly successful would turn in a much larger amount than a club in one of the

smaller cities, and then they would divide the fund, and probably at the end of the year the club in the smaller city would not have paid any part of the running expenses." This was discontinued about five or six years ago. Out of the fund are paid the operating expenses of the league, umpires' expenses and salaries, printing, etc. The baseball business is very hazardous, and a man who invests money in it is taking considerable chance. Very few are qualified to conduct the business. Selling stock to a number of poor people in a community is bad. "I would never tolerate that, nor the American League." Such people rarely get returns, or the principal. A man conducting baseball business must be firm in a great many ways, because the press and baseball public will often
771 drive a club owner into extravagancies that the business will in no way warrant. Baseball is an open book. The newspapers sometimes run a ball club. Organization is absolutely necessary, and it would be absolutely impossible to conduct professional baseball without the reserve rule, which works no hardship. Does not recall any case where player has suffered to any degree by reason of its operation in the major leagues or in the minor leagues. Better safeguards have been placed around the game in the last 14 or 15 years.

Thereupon counsel for defendants asked the following question:

"Suppose, Mr. Johnson, that in spite of the merits of the system, organized baseball were decided to be an illegal combination, a monopoly, or something of that sort. Will you state under what conditions American Baseball could be played if that organization were broken up."

To this question counsel for plaintiff objected.

The Court: "Organized baseball" is too general a term to be admitted in a question of that sort.

Mr. Pepper: That particular question, sir, Your Honor discouraged me from pressing, and I substituted for it another, which may be equally objectionable.

"Q. Will you, Mr. Johnson, tell us what substitutes for organization could be adopted with the result of keeping professional baseball alive as a business?"

To which counsel for plaintiff objected.

The Court: I take it that "organization" there means the same as it did in the previous question, organized baseball, the present expanded, complicated system that has been explained here, and as to which there are some contradictions.

Mr. Pepper. It means a degree of organization substan-
772 tially similar to that under investigation.

The Court: I think it is too general a question to be admitted. You can go into the various elements and the jury will then know exactly what is being spoken of. But I think that question is seriously objectionable in such a sweeping form.

Mr. Pepper: May I have the benefit of an exception?

The Court: An exception may be noted.

By Mr. Pepper:

Q. Mr. Johnson, what substitute, if any, could you successfully make for the reserve clause in organized baseball as a business. A. I know of no substitute.

The Court: He stated that in substance before, Mr. Pepper, and I saw no objection to his going on and explaining how the reserve clause actually operates, what the limitations of it are, if you wish him to do that more concretely.

Mr. Pepper: I hesitate to do that, may it please the Court, because we have taken so much of the time of Your Honor and the jury, and I think that both of you understand now just what it is. It is not usual to ask such a question, but may I ask your Honor, in the interests of saving time, whether there is any aspect of the operation of it that Your Honor would like to have light thrown on?

The Court: I would not wish to make any suggestion of that sort.

Mr. Pepper: Because otherwise I should not like to take time and ask Mr. Johnson to explain what I think the other witnesses have made clear.

Mr. Marbury: Wandering over the same ground.

Mr. Pepper: It is the same ground, Mr. Marbury, I think, the others have gone over.

Mr. Marbury: Yes.

773 Said he would try to satisfy Collins in that particular and in the end paid him $15,000 to sign the contract and gave him a contract for five years at $15,000 a year. The transaction cost the Chicago club $140,000. The satisfaction of the player is the most important part of transactions including the transfer of players. It is necessary in order to have him give the club his best services. It is always the aim of the management to satisfy the player, and it is done as a rule—in about 95 cases in a hundred.

The witness further testified that the Federal League began what they termed major league ball in 1914. At that time witness had a talk with Gilmore, the president of the Federal League. Thinks Gilmore wanted to operate Federal League under the National Agreement.

Defendants' counsel then asked the following question: "What proposal, if any was made to you as a representative of Organized Baseball, by the president of the Federal League, with respect to future relationships between the two parties?" The witness replied: "His suggestion was that the Federal League should operate under the National Agreement, and wanted it recognized as a major league. Those were his thoughts expressed to me." Witness told Gilmore that there was not room for three major leagues unless the standard of baseball was lowered. Gilmore wanted a meeting with the National Commission and requested that witness get in touch with Herrmann and Tener to determine if a meeting could be held to shape their differences, and they could be recognized as a major

774 league under the National Agreement. Witness told Gilmore he would communicate with him again if he could arrange the interview, but never did so. This conversation was in February, 1914. Witness had a subsequent meeting in March, 1915, on the same general subject with Mr. Ward, who wanted an amalgamation with the American and National Leagues. The Chicago suit had then been instituted.

The witness further testified that he was first informed of the tentative agreement on December 14, 1915, when the American League was in session in Chicago. Mr. Dreyfuss, who came as an emissary from the National League, presented it to that meeting. Mr. Dreyfuss had typewritten copies of the agreement with him. It was examined and considered at the meeting, in consequence of which a committee appointed at the meeting, consisting of Comiskey, Col. Ruppert, C. W. Somers, Lanham and witness, went to New York, where they held a meeting with the National League in the afternoon at the Waldorf. Also had an evening meeting at the Waldorf. Gilmore, Sinclair, Weeghman and Rasin attended that evening meeting and Janney came in later. The purpose of the meeting was to establish better conditions in baseball. Wanted to wipe out the guerilla warfare that had been in progress. It was then in the early part of the winter with months intervening before new season opened up, and witness felt that there was a world of trouble in store for baseball if conditions were allowed to continue as they were. Thought then that the Federal League was beaten to a frazzle. Knew it had not any chance to continue, but there was some life in its body, and it could kick up a lot of nasty trouble.

775 which they did not want, as it was not doing baseball any good, but a lot of harm. They were encouraging players to break contracts and messing up things in a general way. Wanted to preserve the game's integrity. Thought they were doing things absolutely detrimental to the sport, and that is one reason why we wanted to brush them from the stage; felt that they were absolutely a drag and detriment to the game. The meeting was held for the purpose of bringing about this agreement which would have this result. Witness does not recall any statement by any one of the Federal League people at that meeting by way of protest against an agreement which would have that effect. The first thing we wanted to determine at that meeting was whether the Federal League Committee had full authority, and we insisted upon that point being established before proceeding at all. The question was asked the chairman whether the Federal League had full authority. It was constantly pressed throughout the meeting because Sinclair and others were inclined to argue, and it occurred to us that maybe they did not have authority. They stated they had full authority and no one contradicted them. Rasin was present and Janney was there later. All who attended the meeting representing Organized Baseball were there to establish conditions in baseball that were going to result to the benefit of the game. The medium through which this was to be established was paying out certain sums of money to satisfy these peole and set them adrift,—

through the medium of an agreement to that effect. Everyone was there attempting to negotiate an agreement including those who were there representing the Federal League, and Janney and Rasin.
They were satisfied that night, and it was only a few days
776 later that they changed their course of procedure. There was no protest or objection at that meeting by anybody against going into an agreement or combination with Organized Baseball, and nothing was then said in regard to reconstituting the league before Baltimore would accept a franchise in it. Mr. Janney's statement was made in witness' hearing. He wanted a major league franchise for Baltimore in Organized Baseball. The National Commission was clothed with authority by the two major leagues to represent them in drawing up a peace pact and the Federal League was represented by a committee consisting of Gilmore, Sinclair and Weeghman. Witness insisted on getting together immediately and clearing up the situation. The meeting was held in Cincinnati on December 22, 1915, the date the agreement bears, and they were in session there two or three days. Up to the time the agreement was signed no protest had been received from any Federal League source against proceeding with the negotiation and the framing of the agreement, nor was any such protest received on the date of its signature.

On cross examination the witness testified that he was the first president of the American League as a major league; and was president of it when it broke away from the first National Agreement which could not be dissolved except by the consent of the parties, but that the American League had never signed that agreement and had no voice in it. In 1893 the old National Agreement was operated and controlled entirely by the National League. The signers of that agreement were the National League, the American Association, the Northwestern League. The American Association
777 in those days was a major league. In 1899 it consolidated with the National League at Indianapolis. The National League took four clubs from the American Association and became a twelve club circuit. The American League took its name one year in advance of its becoming a major league. When a minor league it was subject to the draft. In 1903 the government of baseball had been destroyed, and the National Agreement was abandoned entirely. The American League broke away from the old National Agreement and set up an independent organization. Were invited to go into Washington and Baltimore originally and occupy some of the vacated territory, which is what caused them to make the move originally. Continued independently through two years and in the third year an agreement was reached. Does not believe that they made money those two or three years, but did not lose very much. Could not afford it as we started on a shoestring and did not do a very tremendous business.

By Mr. Douglas:

Q. Don't you think you would have remembered it if you had made any money? A. Yes, I think so.

Q. What do you remember about that? You did not make any, did you? A. I don't think—if there was any made it was not a great amount.

Q. You did not see the color of it anyway, yourself, did you? A. I was not handling the funds of the league. Each club operated separately, handled their own money.

778 Q. How many clubs did the American major leagues have? A. At that time?

Q. Yes. A. There were 16.

Q. As to the question of profits, you got the reports of the gate receipts, did you not? A. Oh, yes.

Q. From all those clubs? A. Yes, indeed.

Q. And you cannot tell us now whether any of them made any money? A. Well, you have the records here and if you want to show them to me——

Q. I am asking simply your recollection. If you do not recollect it we will pass on. A. All right. That was 16 years ago, and that is a long while.

Q. But as president of the American League I imagine you would have a pretty distinct recollection whether during the independent life of the American League it made any money, and I understood you to say your recollection is that it did not. A. During that period of two years?

Q. Of independency, yes. A. I don't think they made any great amount of money.

Q. I thought you said you did not make any money, to the best of your recollection? A. It could not have been very much.

779 Q. Is it not true, Mr. Johnson, that you lost money during that period of time? A. Well, if we did it was very little, very little.

Q. You mean if you lost, it was very little? A. Very little.

Q. You said you started on a shoe string. How much money did the American League have invested in its independent venture at that time? A. We did not build a grandstand in those days on such an extensive scale as we have them now. I think the Boston plant that we built cost something like $43,000 or $45,000. The plant in Philadelphia probably cost $25,000; not to exceed $25,000 was spent in Baltimore.

Q. Now, it is not necessary—— A. We had our own plants in the West. We were established absolutely in the West.

Q. Did you have in all invested in those plants over $300,000? A. No, sir.

Q. You did not? A. No.

Q. You were enabled, primarily because of your leadership, or whether that is so or not, to make the National League feel very uncomfortable during those two years? A. We had some uncomfortable periods, too.

Q. I was asking about that a moment ago, and I am asking now about their uncomfortable nights. A. Oh, yes, they were finally obliged to come to us; that is true.

Q. Obliged to come to you? A. Yes.

Q. And they took you in? A. No, they did not take us
780 in. We formed a new government.

Q. Did you take them in? A. I am inclined to think we did, yes.

Q. I had some suspicion of that myself. But at any rate you got together? A. We got together.

Q. And made peace? A. Yes.

Q. At the cost of competition? A. No, I don't think so; the competition did not hurt us very much.

Q. You were so badly hurt that you could not feel any more; is that the situation? A. We were established in the West then we started. We had organizations, we had four well-equipped ball parks and we had four experienced men conducting the business in four Western towns, and we tried to establish good clean ball men in our four eastern cities.

Q. I was not so very much interested in the clean men but I was asking you about the doing away of competition; I was asking you this, and I wish you would give me a categorical answer, if you can. A. Yes.

Q. Did not you as the head and front of the American League, with your army behind, big or little, establish peace in 1903 at the cost and expense of competition? A. No. We really established peace in the winter of 1902.

781 Q. I suppose you could do this as well in the winter time as in the summertime. A. It was at the end of the season. It was at the time that the National League was holding its meeting in New York City.

Q. And it was done at the cost of competition for the ensuing baseball year? A. We did not shape the National agreement at that time. The National agreement was shaped in September. We were only working the first year under a peace pact, and that was not very satisfactory.

Q. It was not very satisfactory? A. No.

Q. You established the National agreement? A. Yes, sir.

Q. Which we will call the permanent peace pact. A. Yes.

Q. You got peace? A. Yes, sir.

Q. And you got that peace at the end as the result of the destruction of competition between the National and American leagues? A. No, we did not. We did not figure on competition.

Q. You did not? A. No.

Q. The competition did not amount to anything? A. No.

Q. You mean your organization was so small that the National Agreement did not know you were there? A. No.

782 Q. I mean the National League. A. No, that was not it. I will tell you the only reason why we shaped up. There was a lot of contract jumping and contract breaking, and that is why we shaped it up to the National League. It had gone far enough and the National League was probably far more sensible than we were. They came to us and proposed peace. If we had gone to them probably they would have turned us down. They were supposed to be the big organization. But they came to us. It was

about time to stop hostilities because the contract jumping was very prevalent.

Q. The contract jumping was just simply one of the sym-toms of the disease? A. It is one of the most dangerous things in baseball, contract jumping.

Q. That showed the character of the disease from which both of you were suffering? A. What, contract jumping?

Q. Yes. A. No. We never encouraged a ball player to break a contract—bear that in mind.

Q. Were they jumping by themselves? A. Jumping to the National League.

Q. Jumping from you, the American League, to the National League? A. Yes, we lost some in that respect.

Q. And then they jumped from the other side of the fence to your side of the fence, too? A. That agreement at Cincinnati will

783 show you the players who had signed the contracts.

Q. I want to get the conditions. The condition which existed was this, that the players were jumping, sometimes from your side of the fence onto the National League side of the fence, and then they would return the call and jump from that side onto your side? A. They did not jump any contracts to come to us; they jumped the reserve rule.

Q. That is all right. A. The reserve rule is always wiped out when conditions like that exist.

Q. The result was that the contest was going on between the American League and the National League, and it had this effect. It caused the players to jump contracts, sometimes with the American League and sometimes with the National League? A. No; we did not accept any contract jumpers, bear that in mind; we did not accept a contract jumper—bear that in mind.

Q. When a man jumps, he jumps from somewhere to somewhere unless he stays in the air, does he not? A. Yes. They jumped the reserve rule but the reserve rule is always wiped out under those conditions. It was wiped out in this present Federal League fracas.

Q. I understand; let us hold it down to this particular question. I am trying to get clear before the jury and his Honor, and the rest of us, what you mean by contract jumper. A. A man who

784 breaks a contract.

Q. He wrecks a contract that he has with somebody, does he not?

Q. Contract jumpers of course signifies they are under contract obligations, whether it is a reserve clause or for a certain definite period of time with somebody. When you refer to the trouble you were suffering from, contract jumping, did you refer to men who were under contract with the National League who would jump to you, or men under contract with the American League who would jump to the National League? A. Oh, no; I told you we did not accept any contract jumpers.

Q. Then they were men who jumped from your league? A. That is we might say jumped the reserve rule or, rather, ignored it

Q. And all that came from a contest between the two leagues of players; is that right? A. Yes.

Q. And one of the purposes of this peace pact was to get rid of that condition of the players, was it not? A. You cannot——

Q. You can answer that question by yes or no. A. Yes.

785 Q. Why did not you say it before, and get rid of it? A. Yes.

Q. Don't you think then, won't you tell this jury, Mr. Johnson, that in a contest between the American and National League for players, that that was competition between you for players? A. Yes, while we had it.

Q. Then your purpose was to eliminate competition between the two leagues for players? A. No; we did not eliminate the Federal League. They eliminated themselves.

Q. I am not talking about the Federal League. We will get to that situation later. A. All right.

Q. I am talking about what brought you and the National League together—to get rid of competition for players. A. No; we got together to restore normal conditions.

Q. Those expressions are very beautiful nowadays, and they are as clear as mud to me. You can clear it up if you will. Do you object to using the word "competition"? A. No.

Q. The word does not bother you? A. No.

Q. You have already said you did this to get rid of the contest between the American and National Leagues for players.

786 A. I told you we got together to better the conditions in baseball and to stop contract jumping.

Q. In order to stop contract jumping specifically and concretely you had to stop the competition for players, did you not? A. Well, just as soon as we reorganized we had the reserve rule.

Q. You can answer that question. A. No, I don't think we cared for competition at all. We did not care for competition in 1914 or 1915.

Q. I did not mean to intimate that you were in love with competition, but you don't mean to tell this jury that you did not want to eliminate the competition in the American and National Leagues—do you mean to convey that idea to the jury? A. We did not have competition in our minds when we shaped up with it.

Q. You did not, and yet you say you had in your mind the contest between them for players that created this intolerable situation? A. I did not use the word intolerable.

Q. I am using it. A. I know you are. I did not use it before.

Q. Is it not a good word? A. Yes, a pretty good word.

Q. Does it not describe your situation? A. When?

Q. When this bitter warfare was going on between these

787 two leagues. A. When? What two leagues?

Q. I am talking about the National and American. A. If you will ask the question I will be glad to answer it, but you confuse it so.

Q. We will leave that to the Court and jury whether I have confused it or not. I have not purposely confused it. I have asked you

if it was not an intolerable situation, this contract jumping condition that you have described? A. There is no doubt about that; it was.

Q. Then you don't object to the word "intolerable" that I use? A. No.

Q. You were trying to get rid of that? A. Get rid of what?

Q. Get rid of that intolerable situation that resulted from contract jumping? A. I answered that.

Q. And then you consolidated your two organizations and put them all under the government of the National Commission? A. No, we did not.

Q. I mean as to their inter——. A. No, we did not.

Q. What did you do? A. We shaped up a working agreement with the National Association. I told you there were two parties to the National Agreement, the two major leagues and the National Association. They shaped their organization and met us,

788 and then we prepared the National agreement, and both of those organizations are operating under it today.

Q. That is what I said just now; you brought them together? A. No; you spoke of two major leagues.

Q. I beg your pardon. I said the National Commission. A. No, we do not control the National Association now; the National Cimmissioners does not control the National Association now.

Q. I am not asking about nor have I mentioned the National Association. A. If you will make your questions clear I will be very glad to answer them.

Q. I imagined that you were intelligent enough to answer an intelligent question. A. You are so general.

Q. I think I am pretty concrete when I am asking you something that you do not answer; but let us get on. A. You speak of this National agreement——

Q. I asked you this general question, and the stenographic records will bear it out, if you then did not get together these two organizations for the reason that you have announced and stated, under the general government of the National Commission. That is what I asked you; that is the A, B, C, that is true, is it not? A. Yes, with the National Association—yes, we did.

Q. So there were three parties to this agreement? A. Two.

Q. Let us see about that. The American League was

789 one, the National League was another—— A. No, they are one.

Q. They were not one before they signed the agreement? A. The two major leagues are one.

Q. Before they signed the agreement they were two separate parties? A. What agreement?

Q. We are talking about the National agreement. A. You are talking about the National agreement, are you not?

Q. I think I am. There were three parties that signed that agreement, your American League, the National League, and the National Association of Minor Leagues? A. That is correct.

Q. After this agreement was signed in 1903, I mean the National agreement, there was not any competition between the American

League and the National League, was there? A. No; we had our reserve rule.

Q. You can say yes or no to that question.? A. No.

Q. You had competition before that? A. We had competition in the world series.

Q. You mean simply to win three or four games. You have talked a great deal about the game, Mr. Johnson. Were you not in a different game from the one you described to the jury? You have been talking about preserving the intergrity of the game
790 and the sport. The game and sport you and Mr. Herrmann and the other gentlemen were engaged in, and are now engaged in, was the game of making money; is not that true? A. Why——.

Q. I am quite sure you can say yes or no to that. A. Are you speaking of individuals?

Q. I am speaking of you individually and as an officer of two or three different organizations. A. Yes, I have made my living out of baseball.

Q. It is very hazardous but the hazard has not affected you in the slightest degree, has it? A. I think it has.

Q. Professional baseball is nothing more or less than commercialized baseball; is not that true? A. I don't think so.

Q. Well, you commercialize it, don't you? A. I don't think so.

Q. You make a business out of it, don't you? A. Why, it is not conducted by the American League as a business, for profit.

Q. It is conducted just simply for the love of the sport? A. The individual clubs may conduct it for profit in the business but it has not been a very profitable business.

Q. Did you use the word "may" deliberately, or was it simply a misuse of the word "may," when you say the constituent members of the American League may conduct their business
791 for profit? A. Well, they have not conducted it for any great profit.

Q. Don't they conduct it solely for profit? A. No, sir.

Q. They do not? A. I do not think so.

Q. You are president of the American League, are you? A. Yes, sir.

Q. And have been since it has been a major league? A. Yes, sir.

Q. Have you been president during all these fourteen or fifteen years simply because of the love of the American game called baseball? A. No; it has been a business with me.

Q. Would you object to telling what salary they have paid you? A. Well, I drew $30,000 this last year.

Q. What did you draw the year before that? A. I did not draw that much; I think it was about $25,000.

Q. $25,000 the year before? A. Yes, sir.

Q. Is the American League under contract to pay you a salary for any stated time? If so, for how long a time and how much? A. I think the contract has about fourteen or fifteen years to run at $30,000 a year.

Q. That is the contract you have with them? A. Yes, sir; they made the contract.

792 Q. You did, too, did you not? A. Yes, I did too; they suggested it.

Q. You did not find it difficult to yield to the seductive suggestion, did you? A. Not at all.

Q. And yet you love baseball as a sport and the great American game very much, don't you? A. Yes, sir.

Q. Do you remember when the Federal League was born? A. Yes, sir.

Q. During its short life it was somewhat of a stormy petrel, was it not? A. I did not pay much attention to it.

Q. You did not? A. No, sir.

Q. You did not pay any more attention to the competition that it created than you did to the competition you created for the National League in 1903 and before that time? A. We paid absolutely no attention to the Federal League.

Q. You did not? A. Of course we tried to preserve our own ranks and keep things snug.

Q. The Federal League started on its way, in 1914, the first season? A. I think they started in the winter of 1913.

793 Q. And you say you paid no attention to it? A. Very little.

Q. It did not interest you at all? A. Oh, yes, I followed it.

Q. What did you follow it for? A. I followed its course. I wanted to know whether it was going——

Q. You did not blindfold yourself? A. Oh, yes, I followed it. I was interested to the extent of following it, and I followed it pretty closely, too.

Q. You followed it close enough to have a confab with Mr. Gilmore before this organization had really started its first spring? A. Yes, sir.

Q. And you had talks with Ward and others the next year? A. Yes, sir.

Q. Organized baseball, as you call it, which is the assembling or gathering together of all of the professional clubs in the major and minor leagues, in 1903 that occupied the territory of the United States pretty fully so far as professional baseball playing was concerned, did it not? A. Yes, the territory was pretty well covered in those years.

Q. Pretty well covered? A. Yes.

Q. It was so thoroughly covered that you did not think there was room enough for another major league in the United

794 States? A. I did not think so then and I don't think so now.

Q. You thought therefore that when the Federal League got into existence it ought to be knocked out, did you not? A. No; they had a right to come into the field. It was a question of the survival of the fittest.

Q. You have said that the National Commission is not operated for profit? A. Yes, sir.

Q. But it has made a profit from time to time, has it not? A. No, sir.

Q. You said at one time it divided its profits among the different clubs composing the constituent organizations? A. I made no such remark.

Q. I do not mean the Commission; I mean the American League istelf. A. Oh, yes.

Q. You have had the reserve clause ever since there has been organized baseball, ever since September, 1903? A. Yes, sir; we had it before that.

Q. And it is a pretty active institution in organized baseball, is it not, a pretty active theme? A. What?

Q. The reserve clause? A. Yes.

Q. The rule as to the reserve clause? A. Yes, sir.

Q. Do you make all your contracts now with the reserve
795 clause in them from year to year? A. Yes, we have a method of reservation.

Q. And it is uniform, is it not? A. Yes, sir.

Q. We ask your counsel, and ask you for your counsel, for a list of all the contracts between these two different leagues and their constituent clubs that did noi contain the reserve clause. A. We have no such contracts.

Q. You have no such contracts? A. No.

Q. So each year—if you give them next year, whether the reserve clause runs over one year or not, you put it in the next year's contract, and in the next year's contract, and in the next year's contract; that is right, is it not? A. We have a reserve every year, yes, sir, we make no departure from that.

Q. So there is no break, no hiatus about it at all? A. No.

Prior to 1902 the National League and American Association were operating as major leagues. Buried their differences and reached an agreement by amalgamation, and the American Association was practically absorbed by the National League. The Pacific Coast League ran independently for one year. Then they returned to Organized Baseball. Then there was another organization on the Coast thaw ran antagonistic to the Pacific Coast League and
this was operated for about a year and then collapsed. Thinks
796 they formed some sort of a combine with the Pacific Coast League. The Tri-State League existed in Pennsylvania.

The witness further testified that the American League was not a party to the tentative agreement of December 13th. It was not approved at the meeting of the American League in Chicago when it was brought there by Mr. Dreyfuss. Decided to go to New York and have it analyzed. Authorized a committee to meet the committees of the National and Federal Leagues, and clothed it with full authority. The Federal League could have done some damage during the winter. It was conducting guerrilla warfare. Had no doubt as to the finish of the Federal League. Went into the agreement in order to stop the trouble. Does not think guer-illa warfare is the same thing as the term "cut-throat" competition, as used by plaintiff's counsel. The latter means "right down to a finish." Knew then that

the Federal League had not a chance to put a stadium on the Lennox Avenue property, for the reason that twelve years before the American League had spent six weeks working on this property and knew all the difficulties that surrounded it, after which two immense apartment buildings were erected thereon, the street was involved—then there was the river front. After an examination of four or five weeks the American League absolutely abandoned the property as impossible because it was surrounded by too many difficulties. The Federal League statements did not fool the American League people, but evidently fooled the National League. Asked if he had heard Rasin say at the meeting at the Waldorf that he was there with authority from the Baltimore Club to join the new
797 peace pact, the witness answered that he had not nor had he heard Mr. Janney make such a statement; that he did not hear anybody ask the Baltimore people for their credentials. Witness certainly thought everybody was agreeable to what was being done. Had a stenographer present at the meeting. Q. "Was not this a private confidential meeting at the Waldorf?" A. "Yes. Why, yes, yes, it was a private——" Witness was not instrumental in introducing the stenographer and doesn't know why he was introduced. Attended a meeting on the following morning at the Waldorf, when the Baltimore people were not there, but does not think a stenographer was there. Witness refused to take any hurried action. It was postponed until a week later. Asked why it was necessary to have a stenographer at the meeting at the Waldorf and not one at the meeting on the following morning, the witness answered that the National League arranged the meeting of December 17th, and it has always been customary for the National League to have a stenographer report their proceedings. Did not need any more ball parks. Never saw the Pittsburgh Park and can tell nothing about it. Never paid any attention to it. Did not think it was worth a dollar to Organized Baseball.

By Mr. Douglas:

Q. Can you tell us without any lengthy answer why did you pay $50,000 for it? A. That was a tentative agreement that the National League entered into, and we abided by their decision in the matter. I could not see any reason why Pittsburgh should be given $50,000. As a matter of fact I did not want to give a five-cent piece to Pittsburgh.
798 Q. What you wanted to do was to knock them out? A. Knock them out; that is it.

Q. Not to pay a cent? A. Not a nickel.

Q. You were not as generous as Mr. Herrmann. Mr. Herrmann said yesterday he wanted to help them out. A. I did not want to help them out. I am very frank in that regard.

Agreed to pay $400,000 to Brooklyn. Personally was opposed to any settlement, but if the clubs wanted it, it was their business, and the clubs agreed to it. They got a stand that Mr. Gilmore testified cost Mr. Ward $300,000, and they acquired a lease on the property. The lease was sub-let, and the chairs were sold for seventy-five cents

a piece, which was a good price for second-hand chairs, which cost $1.25. There were 10,000 or 12,000 chairs. The $400,000 was a very good investment in getting rid of a bunch of guer-illas. Used this word in a jocular sense and withdraws it. The payment of $400,000 re-established normal conditions in baseball. They could not continue, as they were going. The American League was not affected by the stadium story. The peace agreement was signed December 22, 1915, and witness signed it as the authorized representative of the American League. The Baltimore Club was not supposed to be in the peace conference at Cincinnati. There was an authorized committee there. After the peace pact was signed Baltimore refused to serve on a committee that had been appointed. Witness never heard that Baltimore repudiated the whole business.

The committee was appointed as the conference was finished,
799 and its work was supposed to be conducted at a later period.

First payment under peace agreement was about a year ago, and they did not pay any money until a couple of years after the peace conference, and after the suit in Philadelphia.

Would not have gone into the peace pact without Baltimore, and thought that the Federal League Committee had the power to act, and if so, they certainly had the support of the Baltimore Club. Assumed this, and never found out that the committee did not have authority. Baltimore objected, but witness always figured that was a subsequent thought on the part of Baltimore. They tried to get something and did not, and then they started on another course.

Mr. Douglas:

Q. They never showed any evidence, never showed any authority, nobody ever presented any proof of any authority at that meeting on the night of the 17th, or at any other time, did they? A. No.

There was never any meeting of the Committee of seven, which was to dispose of the Buffalo and Baltimore interests. Herrmann, Tener and witness were three of the seven, Barrow was the fourth, and Gilmore the fifth. Does not know that Gilmore had power to name the Baltimore representative on the committee. Possibly the Baltimore Club could select their own spokesman. The majority of the committee was to decide, and its action was to be final. Does not know just what the committee could have done. It did
800 not hold any meeting. Witness was prepared to meet with the committee at any time, and so were the other members of the committee.

The Defendant Byron Bancroft Johnson being recalled as a witness for the defendants, testified on direct examination in answer to a question as to the bleacher capacity in the parks of the American League, that in Chicago the bleacher capacity for 25 cent seats is between 6000 and 7000, the total seating capacity of the park being between 28000 and 29000; that in St. Louis the bleacher seats at 25 cents number 8000, the 50 cent seats 5500, and the grandstand seats between 10,000 and 11,000; that in Detroit the bleachers accommodate 5000 and 50 cent pavilions 5000, the grandstand seating

about 12000; that in Cleveland the bleacher capac
801 is about 1800, the two pavilions 6000 or 7000 and the gran
stand about 11000; that in Boston there are 7000 bleach
seats, 4000 or 5000 50-cent seats, and 12000 in the grandstand; th
in New York the Polo Grounds of the National League are used; th
the Philadelphia total seating capacity is 28,000, of which 45
are bleacher seats and 8000 pavilion seats; that in Washington t
bleacher capacity is about 1200, the two pavilions accommodati
2500 or 3000 each and the grandstand 9000 or 10000; that t
uniform charge throughout the league for bleacher seats is 25 cen
The witness further testified that the World Series prices ha
remained substantially constant from year to year.

The defendants then called as a witness in their behalf JOHN HEYDLER, who being first duly sworn testified on direct examinati
as follows: That he became president, secretary-treasurer of t
National League December 11, 1918, and is a member of the N
tional Commission. His predecessor, Mr. Tener, is named as
defendant in this case, but witness is not. Was elected secreta
treasurer to the league in 1907, which office he held until *he* beca
president in 1918. Acted as president for a period following
Pulliam's death and again in 1913. In 1901 was sporting edi
on the Washington Post. Became private secretary to Mr. Pulli
at opening of season of 1903, after the amalgamation of the
leagues and the peace compact. The National Agreement ca
in the autumn of 1903. The National League is not an organizat
for profit. It has an income from several sources. Some ye
receives income from contracts for sale of baseballs and in
years from the World's Series. Operating expenses run from seve
to eighty thousand dollars per year, and deficit is made up by ass
ments against the clubs, share and share alike monthly during
season, which run from three thousand to forty-eight hundred
lars per club.

802 With regard to the contract for the sale of baseballs, wit
stated that there were several competitors for the balls
in the National League, some wanted them to take them for noth
and all kinds of propositions were made, and they finally agreed
Spalding, with whom they entered into a contract by which
National League was to pay the market price of $15.00 per d
for balls and Spalding was to pay the League $20,000 a year
the privilege of advertising the selling of this ball as the one
by the National League. But the manufacturer does not deal
the clubs, which pay the price to the league, which in turn
it to Spalding. The league is only a common agency for the
chase of balls for the clubs, which pay the contract price of $1
per dozen.

Annual dues of $100 are paid by each club to the National Lea
The constitution provides that prices shall be 50 cents and 25 c
In nearly all parks grandstand seats are 75 cents. Prices gene
the same around the country, and about the same as seven or e

years ago, with the exception of the war tax, and in order to make quick change prices were raised to 85, 55 and 30 cents. The difference between the amount of increase and the war tax was used for charitable purposes. The constitution of the league governs the price as well as the basis of division, and prices are uniform, no difference being made between exhibitions because one club plays better baseball than another. World's Series prices are increased and fixed by the National Commission. The games of that series are held under the auspices of the National Commission.

The witness further testified that he was present at the meeting held at the Waldorf-Astoria December 17, 1915, and acted as secretary; that the minutes are an accurate record of the meeting. Apart from what the record shows, witness recollects everybody pres-
803 ent. Those that were present when the meeting started and had some relationship to the Federal League were Mr. Gilmore, president of the League, Weeghman, Sinclair and Rasin. Did not then know Weeghman and Rasin, asked who they were, and placed them all on the record as being members of the Federal League Committee. After the meeting started Mr. Janney came in. There was no mention made by the Federal League Committee, as far as witness recollects, as to who constituted the membership of the committee, and witness assumed that all Federal League people present were members of the committee. Before the meeting, had suggested to Governor Tener that stenographic report be made "so that we will know afterwards what is agreed on." Does not think the arrangement had reference especially to the presence of the Federal League. It was simply to get an accurate record. It is generally customary to have stenographic minutes or records of National League meetings.

Thinks Mr. Sinclair received a copy of the minutes. Does not remember any dissent or protest on the part of any of the Federal League people against the purpose of the meeting held that evening. The purpose was to arrive at a peace agreement. No protest or objection was made by Mr. Janney or any other of the Federal League people to effecting an agreement between the Federal League and its constituent clubs and Organized Baseball. Only three men talked for the Federal League, President Gilmore, Sinclair and Janney. Weeghman and Rasin did not say a word. Witness did not attend meeting which drew up the peace compact at Cincinnati. He was present at an informal conference on December 13, at which was present Mr. Sinclair and Mr. Gilmore, and he remembers Mr. Sinclair stating that he had no authority at that time. Recalls another statement that we should take care of Baltimore and Newark. This conference amounted to nothing except talk between the National League people and Mr. Sinclair. There was a further meet-
804 ing at the Republican Club that evening at which witness was not present, nor was he present at the Cincinnati meeting subsequently held, but was present at the meeting at the Waldorf on the night of December 17.

The witness further testified that he has calculated the number of

players who in 1913 were parties to contracts in clubs playing in so-called Organized Baseball; that in the minor league organizations there were thirty-eight leagues that reserved players to the end of the year. These amounted to 3,840, odd; that the major leagues reserved nearly 500 players, making the round number of ball players reserved in Organized Baseball in 1913 between 4,300 and 4,400. The approximate number of major and minor league players under reservation at the close of 1918 was five or six hundred for the major leagues and thirteen hundred for the minor leagues making close to 1900. Players who entered the service of the United States were included in the reservation. Does not know what has happened to the difference between 2,000 and 4,000 baseball players, but there were between 1,900 and 2,000 less reserved between 1913 and 1918. These players unaccounted for were free agents so far as Organized Baseball is concerned. So far as witness knows, the 2,000 players were simply reabsorbed in some other occupation. Under Organized Baseball a man becomes a free agent by unconditional release by a club, also if he is not tendered a contract prior to February 1st, and by being dropped off of the reserve list. In the case of a player's dissatisfaction with a contract tendered him, who appeals to the National Commission, and the National Commission decides that the player is right and the club wrong, the decision is simply enforced, and if the club refuses to pay what the Commission finds to be a fair compensation, the man becomes a free agent. A club can make an unconditional release of a player by first asking waivers on the player to see if anybody needs him. If nobody claims him, they can unconditionally release him, and as soon as he is unconditionally released he has a right to negotiate with any other club in any of the organizations, on his own terms. A club would not then have to pay for the privilege of negotiating with the player. He is a free agent. An article of the National Agreement provides that if a player is not tendered a contract on or before the first of February he is a free agent; this refers to a man who had a contract for the preceding year with a reserve clause in it. In order to exercise the right under the reserve clause, the contract must be tendered not later than February 1st. If a club does not put a player on their reservation list, this is tantamount to giving him a release. Neither the American nor the National League have done anything in the courts in regard to enforcing the reserve clause, but an effort has been made to enjoin players who have jumped their signed contracts.

As to what is meant by automatic suspension and ineligibility resulting from a failure to respect the reserve clause,—the witness stated that a player is reserved say at the end of 1918 for 1919; he is tendered a contract or negotiated with say, prior to February 1st. That player does not come to terms with the club at the time the season opens and he is placed on the suspended list by that club. This is the point at which he has the right to appeal to the Commission. Does not recall a case where a player failed to report to his club. In the case of a man who quits baseball at the end of the season and goes into business, the club certifies that the man has notified them that he has quit baseball. He is then placed on a ve-

untary retired list, because he may want to return to baseball, and all he would have to do would be to make an application for reinstatement. There would be no action by the Commission. He would go to his old club, not under the reserve clause, but under the voluntary retirement list, which was first called an "honor list." It was practically put in force for the war. Before that, there were few cases of retirement and there was no rule or regulation about
806 it. Never knew of such a player returning.

The witness thereupon identified and there was offered and received in evidence on behalf of defendants, contract between Federal Baseball Club of Baltimore and Harvey Russell, of Marshall, Virginia, paragraph ten of which reads as follows:

"Paragraph 10. The club owner shall have the exclusive right and option of extending this contract from year to year upon like conditions except that the compensation to be paid the player shall be five per cent each year in excess of the sum named in this contract; provided that written notice of the exercises of such option shall be given to the player on or before September 15th".

The witness thereupon read paragraph 1 of said Russell contract as follows:

"The club owner shall have the right to retain the services of the player for such continuous length of time as it may desire immediately following the close of the playing season, at the rate per day of one-thirtieth of his mont-ly salary as herein provided, provided notice thereof is given on or before the last day of the playing season."

The witness further testified that if the playing season was extended, this clause would take care of that situation.

The witness further read paragraph 9, as follows:

"It is understood and agreed that after the player has given his services in the Federal League for any period of ten different years the said player shall be given, if he demands it, his unconditional release."

The witness further testified that the ten-day release clause is set forth in paragraph 7 of said contract.

Defendants also offered, and there was received in evidence, the assignment of the players' contracts of the plaintiff club executed by Mr. Rasin, as president, acting on its behalf, to the Bal-
807 timore Trust Company, trustee under trust indenture dated September 8, 1915, subject to the terms of said indenture.

On cross-examination the witness testified that the last part of paragraph 1 of the Russell contract covers any extension of the season. Organized Baseball had a voluntary retired list a year or two prior to the war, but the difference in operation was that we only had two or three players who notified their clubs they had retired from baseball, and those players were placed on a special list—a voluntary retirement list. It was the same thing that was done with the man who went into the Army. It is not a fact that a man cannot quit baseball without the consent of his club. If he quits when he is through playing he gets his unconditional release, is dropped off of

the reserve list and is not tendered a contract. Witness would say that a man could quit without the club having a string tied to him. He is still on the reserve list and would have to come back to the club that owned him. Witness does not know that Schmidt quit about three years ago and he is on the reserve list now. If he came back he would go back to the club with which he was under contract when he left.

Mr. Douglas:

Q. Has Schmidt tried to get back into ball playing without having this reservation applied? A. I don't know.

Q. When a man went in the army he was put on the voluntary retired list the same way as Schmidt was? A. Yes, we have got a list.

Q. If a man goes over to Europe and fights a year or two years in the army and comes back, the reserve clause grips him the same as if he went into the butcher business, or any other business. A. Well, they cleaned out our clubs last year.

Q. That is not my question. A. We had last year——

Q. Pardon me one moment. Read the question, please, Mr. Reporter.

(The pending question was repeated by the reporter as above recorded.)

808 A. The club he left to go to war would have the first right to negotiate with him when he returned.

Q. We will not take very much time on it——

The Court: I do not understand the expression, "would have the first right". Would any other club have any right to negotiate?

By Mr. Douglas:

Q. Would any other club have any right to negotiate with him? A. It would be exactly like the reserve clause; the club would have the right——

Q. And the sole right. A. The sole right, unless they could not negotiate.

Q. That club would have the sole right, would it not? A. I should say so.

Q. Now let us see if it is so easy to become a free agent as it seems. A man cannot become a free agent at all if his club, to whom he is tied up, wants him and tenders him any kind of contract, or any kind of terms, or any kind of price, before February 1; is that right? A. Oh, no.

Q. Oh, no? Well, what is right? A. We might take at the end of the season—I have this in mind: A club is allowed to reserve so many players. They possibly may send in a list over and above that number. Our office would simply instruct that club that they would have to drop two men or three men, whatever was necessary

to come within their limit. In that way these men would possibly become free agents.

Q. Do you think you have answered my question? A. I would like to have it read again.

Mr. Douglas: Read it, Mr. Stenographer.

A. That would be one way.

(The question was repeated by the reporter.)

809 Q. Do you understand the question? A. I don't recall where a man became a free agent because he could not come to terms with his club. They invariably come to terms with their clubs. I don't know of a man that really became a free agent because of that condition, where he could not come to terms with them.

Q. The fact is he cannot become a free agent unless his club consents, or unless the National Commission, because of differences as to price, orders him released; is that right? A. I should say if he is released unconditionally.

Q. I mean if he is not released, his club does not wish to release him. A. The club can only keep so many players.

Q. I am not talking about the number of players. I am talking about one player. Supposing a club is within the limit—I am not putting in a condition of the player limit—but a club that is within the limit, and wants to keep this man. It tenders him a contract before February 1. It makes no difference what the terms are. Let us say for half the salary he got the year before. Can he be released without the consent of that club or the consent of the National Commission. A. Not without the consent of the club.

Q. One or the other? A. I would not say—well, the Commission in this regard—where the salary offered him is so low that he comes to the Commission and complains of it.

Q. Yes. A. The Commission then advises the club of which he is a member, "You must pay this man an adequate salary," which they will fix, and the club refuses to pay it—in that case he becomes a free agent.

Q. Yes. But suppose the Commission agrees with the
810 other part of baseball, to wit, his club, agrees with the club as to the salary, what would happen with this man then? A. He would be carried on the list of the club.

Q. There would not be any chance on earth of getting away then, is that right? A. I do not know of a case of that kind.

Q. I say under the rules and practices of organized baseball would not he be, to use the language of the street, sewed up in a bag, and could not get out. A. I would say under the rules he belonged to that club.

Q. You have talked about clubs releasing a man unconditionally? A. Yes, sir.

Q. Do the clubs ever release anybody unconditionally if they think he is any account anywhere, either in high or low degree base-

ball? A. It might possibly be forced to release him to get down to the player limit.

Q. Of course. Let us assume they are within the player limit. They never release a man for nothing when they can sell him for something, do they? A. That is true.

Q. So long as they can sell him they will sell him. And as soon as he is no account to organized baseball they cast him out, and then you say he is a free agent; is that right? A. He may be of account to some club; he may not be of account to their club. Take this situation. We come along to May 15th when our player limit comes into effect. The club may have 25 or 26 men on its list, and they are required to come down to 22 as we did last year. Now they cannot very well cut down, every club is filled up, and the result is that three or four men of that club become free agents—they are unconditionally released.

811 Q. Does that make them free agents because one or two or more clubs in the major league has too many? A. Oh, yes; that would make them free agents.

Q. One minute. Does that operate automatically to make him a free agent, or does that send him down to a lower league without his consent, at that? A. Wait a minute. First they would ask waivers on their men. Nobody claimed them.

Q. Yes. A. They may be placed in a jamb—even if they wanted to release him to class AA, the AA would be filled; they also have a player limit. The next thing to do, "We will release this man outright and get him off our list."

Q. That is if they cannot sell him to any of the lower clubs? A. Cannot find a place for him.

Q. If they cannot sell him to any of the lower clubs he is released. But if you can put him on the toboggan you will send him down from a higher club to a lower club. If they can get anything for him they will sell him; if they cannot get anything for him they release him. A. These 2,000 players that dropped out from 1913 to 1918, that were not held by the clubs, they must have percolated from the top down through the bottom—there are 2,000 players somewhere.

Q. Wherever they are organized baseball does not want them, does it? A. We may want them but we don't know where they are.

Q. You could have held on to them under the reserve clause, if you had wanted them; is not that right? A. If he was a good player, well worth keeping, we would have probably kept him.

812 Q. If you wanted him you would have kept him, is that right? A. I would say so; but good players are very scarce.

Q. In other words you kept no greater number than you wanted, and you kept nobody that you did not think would be of value to organized baseball. Now can you answer my question? A. We are very much restricted, I say, with our player limits.

Q. These 2,000, does not it mean this to you, that the 2,000 which you say have gone hence somewhere, nobody knows where they have gone to, is it not true that that signifies to your mind that

organized baseball let them go because it did not want them? A. Yes. Still they may be good players and come back again.

Good players are very scarce. A ball player is born. Then he is developed in the minor leagues.

No increase in price of admission since 1891, except perhaps for the reserved seats. Prices now are $1.25, $1.00, 75 cents, 50 and 25 cents. Any price above 75 cents is a special price put on by the club for a box seat or a reserved seat. There are more 50 cent seats today than 25 cent seats, but witness believes that the National game is the only amusement that has stuck to old prices despite marvelous increases in salaries, traveling and hotel expenses. The height of baseball, witness thinks, was the close of the 1913 season, since which time there has been a general decrease in attendance. The bad conditions in baseball started with the attack on our contracts by the Federal League. The whole public confidence, witness believes, was lost by constant jumping of players. The public lost faith in a lot of its players and kept away from the games. The fan lost interest when he saw a player whom he had made an idol jump, or want to jump, to some other league for a
813 couple of hundred dollars, and all that is published. The fan begins to lose interest in the game and witness thinks that is what happened to baseball in the last few years. The fan has lost interest in it.

Mr. Douglas:

Q. And you attributed that to the conditions, that developed between the Federal League and organized baseball? A. I think it had a lot to do with it.

Q. As an important member of the National League organization, you regarded it, did you not, as of the most vital moment, vital importance, to remove that condition of affairs? A. I had my private ideas about it, but the club owners thought this was a proper thing, to try to restore stability in the game, that if it went on another year, the game would be wrecked.

Q. In other words, you found it absolutely necessary to get rid of the conditions, that you have just described? It that right? A. I should say so, for the good of baseball.

Q. Or your property would have been wrecked. That is what you said just now. A. And we were going from bad to worse.

Q. So it was really necessary to get rid of the Federal League, was it not? (After a pause.) You can answer that yes or no. A. I had my own ideas about that.

Q. I say, it was necessary, as a matter of stubborn fact, to get rid of the Federal League, or your property would be wrecked. Did you not say that just now? A. I would say that it was leading to such bad conditions, to the contract jumpers, and the loss of faith in our national game, that unless something were done probably the next year we would have run into an absolute wreck.

Q. Therefore you had to get rid of the cause of it. A. I would say that.

Q. Was not the Federal League the cause of it? A. Yes, sir.

814 Q. I will read you just one paragraph from Mr. Herrmann's statement in the 1915 report with reference to the Federal League. I read from pages 6 and 7:

"The Federal League's aggressive activity enticing players of the National and American clubs to which they were under contract, loss of public confidence in the integrity of those who play the game because of these desertions, and the industrial and commercial complications which followed the European War, affected the patronage of professional baseball in 1914 in practically all national agreement leagues. This country-wide condition cannot be satisfactorily explained solely by the existence of an opposition organization which employs questionable methods in its futile efforts to sap the strength of major and minor leagues to equip its teams with first class talent."

—. Do you endorse that as descriptive of the conditions and the causes of those conditions? A. I would like to read that.

Q. Read that or any other portion of it. (Handing witness book.) A. (After reading.) The portions of it are marked here.

Q. Yes. I marked it so I could read the paragraph; but all of it is open to you. A. (After further reading.) I have always felt that the bad baseball conditions began with, as I say, the attack of the Federal League on organized players, beginning on or about

815 1914.

Did not need the Federal League parks except at Newark where it was desired to play Sunday baseball; but it was never used. There was an attendance at one game of nearly 38,000 at the World's Series games at the Polo Grounds in 1912. There are there 1,000 25 cent seats, about 12,000 50-cent seats, and 15,000 75-cent seats and the balance upstairs reserved at $1.00, $1.25 and $1.50. Up to last year the World's Series prices increased. The receipts at the World's Series in 1912 between New York and Boston were the greatest possible to be gotten out of baseball, and were probably over $400,000, because it ran to eight games before a decision.

On re-direct examination the witness testified that the Philadelphia National League Club has 6,000 or 8,000 bleacher seats at 25 cents and in St. Louis seats at that price probably number 10,000, a number of bleacher seats there being free for boys. There are probably 1,000 bleacher seats at the Brooklyn National League Park and a grandstand accommodating 17,000. In Chicago and Cincinnati there are perhaps 3,500 bleacher seats. "I do not want to lay any stress on 25¢ admissions for the reason that you cannot operate baseball for the 25¢ admission rate in these days, possibly." Prices are increased for the World Series—50 cent seats are sold for $1.00 and $1.00 seats for $1.50. It depends on the locality. Box seats as a rule are $5.00, which is a very fair price. The prices for the World's Series from the Pittsburgh series in 1909 to the present time have been practically the same. Witness had charge of World's Series for several years and in 1911 in New York great difficulty was experienced with ticket scalpers. "We tried to reserve the whole stand and there were so many tickets on the market, that we had a ticket

scandal! The following year the National Commission took charge of the tickets, and the scheme was adopted in New York of selling unreserved seats in the lower grandstand for $2.00, and $3.00 for the upper stand which were the only seats reserved. The bleacher seats were $1.00 flat. This plan has worked satisfactorily since. All tickets for unreserved seats were purchased at the gate only.
816 This admission system was to get away from the scalper. The benefit of the increase in the World's Series prices goes to the players, mostly. There is a regulation percentage of distribution. Ten per cent of all games first goes to the National Commission, 60 per cent of the balance of the first four games to the players, and the clubs share and share alike the remainder. Of this remainder, the league formerly received 25 per cent of the share of each club and hereafter will get 50 per cent for administrative expenses.

The players cannot share in the receipts of any games after the first four, that being the number which they can win. This is mostly for the purpose of giving the public confidence that the series will not be dragged out in order to make more money for themselves.

On re-cross examination the witness was asked if in the World's Series of 1912 the total receipts were not $490,000 for seven or eight games, of which the players received $147,000, and the National Commission and the clubs $345,000, to which he replied that if they were the figures given in the book they were correct. The witness further testified that the average World's Series only includes five or six games.

Counsel for defendants thereupon offered, and there was received in evidence, letter dated June 15, 1917, addressed to F. P. Pritchard and others and signed by Chester Farr, Jr., and others, which reads as follows:

Law Offices of Chester N. Farr, Jr.,
1018 Real Estate Trust Building,
S. E. Corner Broad & Chestnut Sts.,
Philadelphia, June 15, 1917.

Frank P. Pritchard, Esq., George Wharton Pepper, Esq., and Samuel M. Clement, Jr., Esq., Counsel for the National Com-
817 mission, The National League of Professional Baseball Clubs and The American League of Professional Baseball Clubs, Land Title Building, Philadelphia, Pa.

GENTLEMEN:

As counsel for the Federal Baseball Club of Baltimore, Incorporated, we are writing you, representing The National Commission, The National League of Professional Baseball Clubs and The American League of Professional Baseball Clubs.

The Federal Baseball Club of Baltimore, Incorporated, is a holder of one-sixth of the stock in the Federal League of Professional Baseball Clubs of Indiana, and of a franchise.

On the 13th and 22nd of December, 1915, certain officers and directors of the Federal League of Professional Baseball Clubs of In-

diana, assuming to represent and to have authority to act for all the stockholders, entered into agreements with the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs, whereby certain sums of money were to be paid to and acts to be done in the interest of some of the ball clubs which were stockholders, together with the Federal Baseball Club of Baltimore, Incorporated, in the Federal League of Professional Baseball Clubs of Indiana.

These agreements are in prejudice of the rights of the corporation which we represent, and were effected in the interests of the parties above referred to purporting to represent the Federal League of Professional Baseball Clubs of Indiana.

As a stockholder of the Federal League of Professional Baseball Clubs of Indiana, the Federal Baseball Club of Baltimore, Incorporated, which we represent, protests against the provisions of the agreements in question and demands of you that no further payments be made to any of the parties specified under the provisions thereof until the rights of the Federal Baseball Club of Baltimore, as a stockholder in the Federal League of Professional Base-
818 ball Clubs of Indiana, have been properly adjusted. Should payments be made or any of the provisions of the agreements of December 13th and 22nd, 1915, be carried out after the notice in this letter, we desire to inform you that the Federal Baseball Club of Baltimore, Incorporated, will hold all the parties thereto to their full legal responsibility for any such acts.

Yours very truly,

CHESTER N. FARR, JR.
STUART S. JANNEY.
L. EDWIN GOLDMAN.

Defendants' counsel again offered in evidence the stenographic record of the minutes of the meeting on the evening of December 17, 1919, at the Waldorf-Astoria between representatives of Organized Baseball and representatives of the Federal League, including Rasin and Janney of the plaintiff club, counsel stating that, irrespective of the question of the authority of Mr. Rasin and Mr. Janney to commit the Baltimore Club to the terms of the final agreement, the minutes were offered to show the participation of the president and attorney of the plaintiff club in the conference understood by all who were present as being a conference to negotiate a so-called peace agreement in some form, which if an illegal agreement then the conference and negotiation itself was an illegal transaction, to which offer counsel for plaintiff objected.

The Court: I indicated before that I would admit every step in the process, subject to objection and exception, reserving for further consideration the question of the legal effect, and if there are any other steps than those already indicated in the testimony, as to which parts of this transcript have been admitted, of course they might be offered. My recollection, from the reading of the minutes as a whole, was that there were some other things in them
819 that might perhaps be prejudicial.

Mr. Pepper: My impression is that it is much more satisfactory to have the proceedings of the conference as a whole before

the court and jury than it is to make any attempt to excerpt particular statements and passages.

The Court: Very many excerpts have been made and admitted.

Mr. Pepper: Exactly; and my thought was that your Honor would probably now be of opinion that the thing had become rather a patch-work, and that the intelligibility of the whole meeting would be greatly cleared up by presenting the actual record of all that took place.

The Court: Let me glace at it again.

(The minutes referred to were handed to the Court.)

Mr. Douglas: If the court please, may I take the liberty of suggesting that action on this offer be postponed and passed on by your Honor when the motion is made by the defendants for an instruction, because I think all those questions, questions affecting the admissibility of these minutes, whether they would be of any service if they were admitted except to becloud the issue, will be among the questions we will argue to your Honor, if counsel for the defendants intend to make a motion to instruct in favor of the defendants. But I think you will save time by postponing action on that matter until that time.

The Court: I do not think I could admit that as a whole, Mr. Pepper, I will exclude it and an exception may be noted.

Mr. Pepper: I thank you, sir.

Counsel for defendants thereupon offered, and there was received in evidence, an extract from the minutes of the meeting of the Board of Directors of the Federal Baseball Club of Baltimore, Inc., held on October 25, 1914, the particular paragraph to which reference was then made reading as follows:

"Upon motion, duly seconded and carried, the Board of Directors elected Mr. Rasin a member of the Board of Managers of the Federal League of Professional Baseball Clubs, for the years 1914-1915, to represent the Baltimore Club."

820 Counsel for defendants thereupon offered, and there was received in evidence, extract from the minutes of the meeting of the Board of Directors of the plaintiff corporation held on November 10, 1914, which reads as follows:

"Messrs. Rasin and Janney, the Committee of two appointed by the club to go to Chicago and go over certain legal papers
821 of the league, reported to the Board the information they obtained regarding the assignment of all leases to the Federal League of Professional Baseball Clubs. They also went over briefly what they learned while in Chicago regarding the present negotiations with the American and National Leagues for peace."

Defendants' counsel then offered, and there was received in evidence, the statement of operating receipts and expenses of the plaintiff, produced by plaintiff at the request of defendants, which is in the words and figures following:

The Federal Baseball Club of Baltimore, Incorporated. Statement of Income and Profit & Loss, December 1, 1914, to January 31, 1916.

Operating Income.

| | | |
|---|---|---|
| Gate receipts: | | |
| At home | $34,742.77 | |
| Abroad | 23,769.36 | |
| Season Books | 255.00 | |
| Special Tickets | 86.35 | |
| Total Operating Income | | $58,853.48 |

Operating Expenses.

| | | |
|---|---|---|
| Salaries: | | |
| Secretary | $3,500.00 | |
| Players | 71,369.72 | |
| Other | 2,504.94 | |
| Bonuses to Players | 6,083.33 | |
| Traveling Expense | 13,707.44 | |
| General Expense | 7,658.38 | |
| Rent: | | |
| Office | 300.00 | |
| 822 Grounds | 4,333.33 | |
| Office Expense | 369.53 | |
| Ground Expense | 2,801.80 | |
| Insurance | 1,273.36 | |
| Taxes | 756.59 | |
| Interest | 3,973.20 | |
| Advertising | 232.40 | |
| Club House Expense | 1,638.87 | |
| Maintenance of Stands | 776.29 | |
| Scouting Expenses | 450.14 | |
| Training Expense | 2,330.29 | |
| Players' Equipment | 500.00 | |
| Cost of Players | 250.00 | |
| Miscellaneous | 4.05 | |
| Total Operating Expenses | | $124,813.66 |
| Operating Loss | | 65,960.18 |

Income and Profit & Loss Debits.

| | | |
|---|---|---|
| Adjustment of Salary Overpaid | $499.95 | |
| Federal League percentage | 6,143.00 | |
| Miscellaneous | 51.57 | |
| Total Income and Profit & Loss Debits | | 6,694.52 |
| Profit & Loss Gross Deficit | | 72,654.70 |

Income and Profit & Loss Credits

| | | |
|---|---|---|
| Concessions | $4,263.99 | |
| Exhibition Games & Park Rental | 1,016.19 | |
| Fines, etc. | 616.65 | |
| Score Book Privilege | 1,200.00 | |
| Valuation of Development and Good Will | 35,103.66 | |
| Sale of Player | 1,000.00 | |
| Miscellaneous | 214.65 | |
| Total Income and Profit & Loss Credits | | 43,415.14 |
| 823 Profit & Loss Deficit | | $29,239.56 |
| Profit & Loss Deficit to November 30, 1914 | | 35,103.56 |
| Profit & Loss Deficit, January 31, 1916 | | 64,343.22 |

NOTE.—The above Profit & Loss Deficit, November 30, 1914, and January 31, 1916, does not include $5,550.00 Account of Assessments which is carried upon the books of the Club as accounts receivable.

The Federal Baseball Club of Baltimore, Incorporated.

*Statement of Income and Profit & Loss, November 20, 1913, to November 30, 1914.*

Operating Income.

| | | |
|---|---|---|
| Gate Receipts: | | |
| At home | $59,500.63 | |
| Abroad | 20,302.79 | |
| Season Tickets | 206.90 | |
| Season Boxes | 194.00 | |
| Total Operating Income | | $80,204.32 |

Operating Expenses.

| | | |
|---|---|---|
| Salaries | $72,466.83 | |
| Secretary's Salary | 2,750.00 | |
| Players' Bonuses | 6,083.33 | |
| Ushers, Gatemen, Ticket Sellers, etc. | 3,284.25 | |
| Traveling Expenses | 17,566.53 | |
| Expenses | 8,711.61 | |
| 824 Rent | 4,410.00 | |
| Fire, Liability and Life Insurance Premiums | 2,540.57 | |
| Assessments | 5,550.00 | |
| Interest | 101.67 | |
| Total Operating Expenses | | $123,464.47 |
| Operating Loss (Forward) | | 43,260.47 |

Income and Profit & Loss Debits.

| | | |
|---|---|---|
| Advertising Preferred Stock | $1,211.35 | |
| Commissions on Sale of Preferred Stock | 2,550.00 | |
| Total Income & Profit & Loss Debits | | 3,761.35 |
| Profit & Loss Gross Deficit | | 47,021.82 |

Income and Profit & Loss Credits.

| | | |
|---|---|---|
| Sale of Privileges | $5,334.00 | |
| Concessions—Sign Board Space | 750.00 | |
| Interest on Bank Deposits | 284.16 | |
| Total Income and Profit & Loss Credits | | $6,368.16 |
| Profit & Loss Deficit | | $40,653.66 |

NOTE.—The item of $5,550, account of Assessments, is carried upon the books of the Club as Accounts Receivable, thereby making the book loss for the period $35,103.66.

Thereupon it was announced that the defendants closed.

825 The plaintiff, further to sustain the issues on its part joined, thereupon called as a witness in rebuttal EDWARD HANLON, who having been theretofore duly sworn testified on direct examination that the Washington franchise was not mentioned in

the conference between Herrmann, Rasin and witness on the afternoon of December 17, 1915; that they tried to get the St. Louis franchise; and that Mr. Janney was not present at that conference.

On cross examination the witness testified that they attempted to acquire the franchise of the St. Louis National League Club for the purpose of playing ball in Baltimore; that if it had been acquired the effect would have been to make Baltimore a major league city under the National Agreement; that witness recalls that when the trial of the Philadelphia case was discontinued, Mr. Herrmann was on the stand and had not completed his testimony.

On re-direct examination the witness testified that as an individual he suggested a major league franchise for Baltimore. He would have submitted it to the people, and if they had not wanted it, witness would have run it as an individual.

Recross-examination.

By Mr. Pepper:

Q. Had you at that time any scruples about identifying yourself with the National Agreement organizations? as to its legality or illegality? A. I never gave that a thought. I had been working under that National Agreement for 25 or 35 years, and the reservation. I had been going along with it myself. I had not thought of the legal part of it at all.

Q. In your conference with Mr. Rasin and Mr. Janney and other Baltimore people at that time, was there any protest or statement made by any of them that the Baltimore Club could
826 not, or ought not, to have any organic relation to organized baseball? A. I do not remember of any.

Q. The desire was all the other way, was it not, as indicated by their expressions? A. They wanted big baseball there.

Q. What did that mean? A. That means to get the best possible, playing in the major league.

Q. How could that be obtained? A. Just by getting a franchise, and getting the consent of the leagues to transfer that franchise to Baltimore.

Q. What effect, if any, would that have had upon the Federal League as a league. A. You mean the League, or the Baltimore Club?

Q. The league, as a league. If Baltimore had succeeded in its desire, in the autumn of 1914, to obtain the St. Louis franchise, what effect would that have had upon the Federal League as a league? A. They did not try to get in, did they, in 1914? This was 1915.

Q. I beg your pardon, I meant 1915.

Mr. Marbury: December, 1915.

By Mr. Pepper:

Q. I meant 1915. A. Now, repeat that question.

Q. The question is, if Baltimore, in the autumn or early winter

of 1915, had succeeded in its desire to obtain the St. Louis National League franchise, what effect would that have had upon the Federal League? A. I suppose if I got the franchise, and the people of Baltimore took it, they would try to satisfy the stockholders of the Federal League in some shape or form.

Q. That is, the Federal League Club of Baltimore? A. Yes.

827 Q. I am talking now about the effect upon the other constituent club in the Federal League that would have been produced if Baltimore had signed up, as she attempted to do, with the National League.

Mr. Marbury: We object. There is not a suggestion of evidence that Baltimore, in the sense of this plaintiff, attempted to sign up anything.

The Court: When you said "as she attempted," that might be objectionable.

Mr. Pepper: As the community.

The Court: As this witness.

Mr. Pepper: That is better. I did not mean to say that. I meant the community. I was not speaking of the club.

The Witness: I do not quite understand your question. If I had gotten the franchise and took it over, and it had been one-eighth of the National League, the people of Baltimore possibly would have been satisfied.

By Mr. Pepper:

Q. What effect would that have had upon the Federal League organization? A. The Federal League as a whole?

Q. Yes, the Federal League as a whole. A. There were five of them that got into an agreement, and I suppose if we had got that franchise over there, and the people want it, I don't know what. They naturally would have been satisfied, I suppose.

Q. I am not talking about what happened after the agreement. I am talking about what happened in the fall of 1915, in December, 1915, prior to the peace agreement, and I want to know whether, if at that time you were making an effort to get a National League franchise for Baltimore. A. No, sir.

Q. When did you begin to make that attempt? A. Just
828 that evening, of the 17th.

Of the 17th? A. Or the afternoon, yes, sir.

Q. Then limiting your attention to the 17th——

The Witness: I did not have any power. I was an individual, and Mr. Rasin an individual, and Mr. Rasin asked me to go along with him, that he had never met Mr. Herrmann, and was desirous of me introducing him to Mr. Herrmann. Then, when we got down there, we got into this franchise——

Q. What was the purpose of the introduction? A. I do not know.

Q. He did not state to you? A. Mr. Rasin did not state to me?

Q. Yes. A. He stated to me that Mr. Sinclair had suggested that I go down and see Mr. Herrmann.

Q. For a social visit, or for what purpose? A. I think possibly he had something like that on his mind. He had suggested, I think, to Mr. Sinclair that the people over in Baltimore would like to have major league ball, a National League franchise, or some other franchise.

Q. So is this correct, that Mr. Sinclair having been told by Rasin that the people in Baltimore would like to have a major league franchise, Mr. Sinclair suggested to Mr. Rasin that if that was so, he had better call on Mr. Herrmann, and that Mr. Rasin then requested you to bring about the introduction? Is that correct? A. That is correct, yes, sir.

Q. What I asked you a few minutes ago, and now repeat, is this, suppose you and Mr. Rasin had succeeded in accomplishing the purpose with which Mr. Rasin went to Mr. Herrmann, what effect would that have produced upon the Federal League as a whole? A. I am not able to answer that. I did not know enough about the inside workings to know just what effect it would have.
829 I suppose it was settled by these agreements these five people had entered into.

Mr. Marbury: They had already entered into them at that time.

The Court: He said the agreements that five people had entered into. You spoke of that before, the five clubs.

Mr. Marbury: That was December 13th, 1915.

Mr. Pepper: This was the 17th, several days before the making of the agreement.

Mr. Marbury: There was one of December 13th.

The Court: I think it is very obvious how the witness is looking at it. But you may proceed further.

By Mr. Pepper:

Q. What agreement are you referring to when you speak of this? A. These different agreements you have been talking about here. I do not know anything about them. I have been listening to them.

Q. I am not asking you about the agreements. I am asking you about what passed at an interview. If the agreements were mentioned at the interview between you at all, what was said? If they were not, I want you to give me an answer to this question, what effect would have been produced on the Federal League as a whole, if on the 17th of December, 1915, you and Mr. Rasin had succeeded in getting a National League franchise for Baltimore? A. If we had got the franchise, I suppose we could had satisfied the stockholders in Baltimore, which would have settled everything, and the Federal League would be out of it.

Q. It would have had the effect, then, of disrupting the Federal League, would it? A. I do not know. It was disrupted previous to this as far as I understood.

Q. It had been? A. That is the way I understood it, and
830 we were going down there to try to do the best we could for Baltimore.

Q. What had happened prior to that date, so far as you then

knew, on the 17th of December? A. I only know this, that we came over there on a telegram from Mr. Gilmore, I think, received it on the 16th, I think possibly, and Mr. Rasin telephoned me to come over to New York, that Mr. Gilmore wanted to meet us on some important business.

Q. But you did not know about what you have referred to as "these agreements" then, did you? when you received the telegram? A. I only know Mr. Gilmore had told us that morning of the 17th—he did not tell me—we were talking to him, and asked him what we were over there for, what he wanted us for, and he said that he could not talk to the three of us, Mr. Janney, Mr. Rasin and myself, and he would take Mr. Rasin in a room and tell him. Mr. Rasin came back. He had gone as far as to say, so I understood, that Mr. Ball, of St. Louis, was to receive $50,000 and with the right to negotiate a franchise for the American League, and Mr. Weeghman also the same, and Mr. Gwinner was to receive $50,000.

Q. In other words, he summarized to Mr. Rasin, the provisions of what has here been called the tentative agreement of December 13. That is correct, is it not? A. I think so, I did not know anything about the agreements previous. I am only telling you what I know up to this time, what Mr. Rasin reported back to me.

Q. What I now ask you is whether, if that tentative agreement of the 13th had not gone through at all, but you and Mr. Rasin had succeeded in getting Baltimore a National League franchise, from St. Louis or elsewhere, what effect that would have produced upon the Federal League as a whole?

Mr. Douglas: I object to that question. He has answered
831 it, and it is perfectly obvious that the Federal League was already dead.

The Witness: That is what I was going to tell him. As far as I knew, it was down and out. Mr. Gilmore gave me to understand that.

By Mr. Pepper:

Q. That was Mr. Gilmore's opinion. He may have been right or he may have been wrong. A. I do not know.

Q. What I am asking you is—and I want an answer unless his Honor instructs you not to answer—to this question, if you and Mr. Janney had succeeded in your effort to get a National League franchise for Baltimore, and the tentative agreement of December 13th had never been carried out, had never ripened into the subsequent peace pact at all, what effect would have been produced upon the Federal League as a whole? A. I never gave that a thought in that light, never gave it a thought. I was satisfied that these people had quit, virtually, and got us over there for the purpose of ratifying it in a sharp way, in my own opinion.

Q. Be that as it may—— A. (Interrupting.) Yes.

Q. I am asking you to give thought to it now, and to answer my question, corrected by substituting the name of Mr. Rasin for Mr. Janney. I want to know if the tentative agreement of December

13th had never gone through at all, and you and Mr. Rasin had succeeded in getting a National League franchise for Baltimore on the 17th of December, 1915, what effect would that have had upon the possibility of the Federal League continuing as a baseball league? A. He was not in any position to deliver, and we would not have taken it until we found out just what would happen.

832 Q. I am not asking you—— A. (Interrupting.) That is as near as I can answer.

Q. (Continuing:)—as to his ability to deliver. Assuming that a National League franchise could have been given or promised to you and Mr. Rasin on the 17th of December, what effect would that have had upon the Federal League as a whole. A. I suppose it would upset things considerably. But there is certainly one thing that I want to say, that we would not have tak*e*n any National League franchise, or any other franchise, if we knew the Federal League was going on, if these people had not entered this agreement.

Q. Then the proposal to take the National League franchise, as far as you and Mr. Rasin were concerned, was a step in a negotiation which would involve the winding up of the Federal League, would it? A. No; no, sir. We would not be any party to anything that would wind up the Federal League, as individuals at all.

Q. No, I am not talking about as individuals. But state whether or not the negotiation for the franchise in major league ball was based upon the supposition that the Federal League had gone out of existence, or was going out of existence. A. It was going out of existence—had gone, yes, sir.

Q. It was your intention, and so far as you know, Mr. Rasin's intention, that upon the dissolution of the Federal League a major league franchise in organized ball was to be obtained for Baltimore. Is that right? A. Yes, sir.

The plaintiff thereupon recalled as a witness for the plaintiff in rebuttal, CARROL W. RASIN, who having been theretofore duly sworn testified on direct examination as follows:

By Mr. Marbury:

833 Q. Mr. Rasin, do you remember some time in November, 1914, going to Chicago along with Mr. Janney representing the Baltimore Federal League base ball club, for a purpose of seeing, Mr. Weeghman or any other purpose connected with the affairs of the club? A. Yes, sir.

Q. Will you state exactly what was the occasion of your going there? A. At that time there was quite a few reports emanating from Chicago that Weeghman, the owner of the Chicago Federal League club had arranged to purchase the Cubs, the Chicago National team, and that they were to play the following year on the Federal League grounds which Weeghman and Ward owned. When that report came out I immediately thought it was impossible, as all leases of the Federal League ball grounds were supposed to be in the hands of the central body of our league—in Gil-

more's hands in other words. I immediately investigated to find out if the Chicago lease had been transferred to the Federal Professional Baseball Club of Indiana.

Q. Mr. Weeghman was president of the Federal League club in Chicago? A. Yes.

Q. And under the terms of the arrangement for the franchise the lease which he held for his grounds there ought to have been transferred to the Federal League club, the Central Body? A. Yes.

Q. You heard that he was negotiating with the enemy, with the National people and you did not think that could be possible in view of the fact you supposed that that lease had been assigned? A. The reports also stated that the National League were to play on the Federal League grounds the following year.

Q. In order to make it clear before you go any further, I call your attention to the entry made in the minutes of the Baltimore Federal League club at the meeting of the directors of No-

834 vember 10, 1914, which Mr. Pepper put in evidence awhile ago, reading as follows:

"Messrs. Rasin and Janney, the committee of two, appointed by the club to go to Chicago and to go over certain legal matters with the league, reported to the board the information they obtained re-garding the assignment of their leases to the Federal League of base-ball clubs. They also went over briefly what they learned while in Chicago regarding the present negotiations with the American and National league for peace."

—. Will you please explain to the gentlemen of the jury what you and Mr. Janney did that has reference to and what you and Mr. Janney did and what you learned there? A. I was coming to that. When these reports came to my attention I knew that it was impossible if the lease of the Chicago league grounds were in Gil-more's hands.

Q. Yes. A. I immediately investigated and learned that they had not put their lease, as Gilmore had intimated to me—they had not put their lease in his hands, and therefore he was in a position if he bought the Cubs to dump the Federal League.

Q. If he bought the Cubs; what do you mean by that? A. The Chicago National League Club.

Q. The Cubs was the popular name given—— A. To the Chi-cago National League club. So I learned as I say that the lease had not been put up. So Mr. Janney and I went to Chicago to insist upon deliverance of the lease into the hands of Mr. Gilmore. When we got there we found out that they had not put it up, and that it would be necessary to call a meeting of the stockholders or directors, I don't know which it was, to transfer the lease to the central body of our league. We stayed there several days. Mr. Janney had several conferences with their lawyer, until they agreed that they would transfer the lease into Gilmore's hands in the shortest possible

time.

835 Q. Had the Baltimore Baseball Club transferred its lease to the Federal League, the Central Body? A. Yes, at the formation of the league.

Mr. Marbury: We offer in evidence, if your Honor please, a certified copy of the transfer from the Federal Baseball Club of Baltimore, or the assignment as it is called, to the Federal League of Professional Baseball Clubs of Indiana, bearing date the 4th day of March, 1914. That was some months before.

The paper referred to reads as follows:

Federal Base Ball Club of Balto. Asst. to Federal League of Professional Base Ball Clubs of Md.

This indenture witnesseth that the Federal Base Ball Club of Baltimore Maryland, a Maryland Corporation pursuant to and in accordance with the rules, regulations by laws franchise contract and resolution adopted by the Federal League of Professional Base Ball Clubs hereby assigns and transfers unto said Federal League of Professional Base Ball Clubs an Indiana corporation all of its right title and interest in and to the annexed lease being a lease dated January 16, 1914 and executed by Edward Hanlon and Helen J. Hanlon. It is understood and agreed that this agreement shall not be operative except in accordance with the rules regulations by laws franchise contract and resolutions adopted by the said Federal League of Professional Base Ball Clubs and when the same by reason thereof becomes effective the assignee herein is hereby granted and given the right to occupy the premises described in said lease or any part or portion thereof or the equipment therein located either in its individual name or in the name of the assignor
836 for the uses and purposes as stated in said lease and the assignor herein agrees to yield the possession of the premises and property described in said lease immediately upon its request when and in accordance with the rules regulations by laws and resolutions of the Federal League of Professional Base Ball Clubs this assignment shall become operative. Dated this 4th day of March 1914.

THE FEDERAL BASE BALL CLUB OF BALTIMORE, INC.,
C. WILSON RASIN,
*Pres.*

Test:
PIERSON.

Attest:
HARRY GOLDMAN,
*Secty.*

By Mr. Marbury:

Q. How long had you been a member of the league when you made the transfer? A. That was done when we were in position to do it.

Q. As soon as you got in there? A. At the formation of the League.

Q. I will read you again what I read a moment ago from the minutes to which Mr. Pepper referred, where it says:

"They (meaning you and Mr. Janney) also went over briefly what they learned while in Chicago regarding the present negotiations with the American and National Leagues for peace."

Tell the gentlemen what that had reference to.

A. That had reference in the first place to any negotiation that Weeghman may have carried on with the National League Club for the purchase of the Clubs. And in the other there was undoubtedly—at least I always understood it so, an effort on the part of our league to form some working basis whereby each would respect each other's contracts and keep players from jumping from one league to another. If I remember correctly I think nothing came of it, and we filed the Landis suit I think several months
837 after my visit there.

Q. Now, Mr. Rasin, did Mr. Weeghman after the visit of yourself and Mr. Janney immediately transfer his lease to the Federal League? A. Yes, sir, my recollection is he did, because we were very much exercised about it at the time, and I remember Mr. Janney wrote several letters to their lawyers or to Weeghman about it.

Q. And who was their lawyer, do you remember? A. No, I do not recall.

Q. Do you know whether it was a Mr. Latham? A. No, I could not say.

Q. Look at the correspondence which I show you and see if that refreshes your memory in any way about it? A. I presume it is. I met him but as I say I really have forgotten his name. However I presume it is.

Mr. Marbury: The meeting of the Federal League baseball club of the directors, of the Baltimore club, at which the witness reported the results of his visit to Chicago, is dated November 10, 1914. This correspondence just follows that, and I would like to read the correspondence in evidence, if your Honor please.

(The Correspondence referred to was marked respectively "Plaintiff's Exhibits Nos. 37, 38, 39, 40, 41, 42 and 43," and was read by Mr. Marbury to the jury, as follows:)

PLAINTIFF'S EXHIBIT 37.

Law Offices
Alden, Latham & Young
Corn Exchange Bank Bldg.,
Chicago.

In re Federal League Baseball Club.

November 10, 1914.

838 Mr. Stuart S. Janney,
Title Building,
Baltimore, Maryland.

DEAR SIR:

As you requested me to write you the first of the week regarding the Federal League matter, I am dropping you this note to simply say that I have not gotten into communication with Mr. Weeghman, but as soon as I do, I will let you hear further from me.

Very truly yours,

CARL R. LATHAM.

Mr. Marbury: That was preceded, however, by Mr. Janney's letter of November 7, to Mr. Gilmore, as follows:

PLAINTIFF'S EXHIBIT NO. 38.

November 7, 1914.

James A. Gilmore, Esq.,
President,
Otis Bldg.,
Chicago, Ill.

DEAR MR. GILMORE:

Both Mr. Weeghman and Mr. Latham arranged with me to execute immediately the Chicago assignment, and I am reporting here that the Brooklyn and St. Louis assignments are in course.

Will you please wire me as soon as each is received. It will help me greatly here to have the matter closed up.

Very truly yours,

J. E. ——.

PLAINTIFF'S EXHIBIT 39.

*Night Letter.*

The Western Union Telegraph Company of Baltimore City.

November 11th, 1914.

Charles H. Weeghman,
Otis Building, Chicago, Ill.

I was much disappointed when I received no word from
839 you about the assignment of lease. We necessarily adjourned
the meeting. Please wire me when yours will be delivered.

STUART S. JANNEY.

PLAINTIFF'S EXHIBIT 40.

*Night Letter.*

The Western Union Telegraph Company of Baltimore City.

November 11th, 1914.

James A. Gilmore, Esq.,
Otis Building, Chicago, Ill.:

Much disappointed at not hearing from you relative to assignment of leases. Will you wire me upon receipt of this what has been done in the matter.

STUART S. JANNEY.

PLAINTIFF'S EXHIBIT 41.

November 12, 1914.

C. R. Latham, Esq.,
Corn Exchange Bank Building,
Chicago, Ill.

DEAR SIR:

I have your letter of November 10th, stating that you have not yet gotten in communication with Mr. Weeghman. The subject matter is of such importance to us, and, therefore, to the league that I am writing to ask if you will not call him up and get his instructions, so that the matters can be promptly consummated. I am sure the delay is only due to his preoccupation with other matters.

Very truly yours,

——.

PLAINTIFF'S EXHIBIT 42.

Western Union Telegraph.

Equitable Building, Baltimore.

840 Chicago, Ills., November 12, 1914.

Mr. S. S. Janney,
601 Title Building, Baltimore, Md.

I will comply with the terms of every resolution passed by our league board my advice to you is to do likewise do not worry about Chicago.

CHAS. WEEGHMAN.
5.50 p. m.

PLAINTIFF'S EXHIBIT 43.

Alden, Latham & Young,
Corn Exchange Bank Bldg.,
Chicago.

November 20, 1914.

In re Federal League Base Ball Club.

Mr. Stuart S. Janney,
Title Bldg.,
Baltimore, Md.

DEAR SIR:

The writer prepared the necessary resolution and assignment of the lease held by the Federal League Base Ball Club of Chicago to the Federal League of Professional Base Ball Clubs, and we understand that Mr. Gilmore has advised you by wire that this has been done.

Yours very truly,

ALDEN, LATHAM & YOUNG,
Per C. R. L.

Mr. Marbury: The witness is with you, gentlemen.

Cross-examination.

By Mr. Pepper:

Q. Mr. Rasin, I take it that the entry in the minutes which you are explaining is as far as it goes a correct statement of what took place at the directors' meeting on November 10, 1914, is it not?

841 A. I should say so.

Q. That is, it is a fact that you and Mr. Janney went over briefly what you learned while in Chicago regarding the

then present negotiations with the American and National leagues for peace. That is, as far as it goes, a correct summary is it of the subject matter of your report? A. I have just—yes; I should say yes. I have explained it to you.

Q. Where did you get your information from in Chicago? A. From Mr. Gilmore and Mr. Weeghman.

Q. From Mr. Gilmore and Mr. Weeghman? A. Yes, sir.

Q. What did they tell you as to the nature of the arrangement which they were hoping to make with the two leagues? A. Mr. Pepper, they were very noncommunicative, and what I just stated was about all I got out of it, and that was like pulling a cork out of a bottle. We really——

Q. Even that is possible in some jurisdictions, Mr. Rasin. How about what they did say to you? They went this far, did they not, that there was a negotiation which had made some progress to establish a working arrangement between the Federal League of the one part and the American League and the National League of the other, respecting the contracts of each organization, by which I mean the contracts between the organizations and the players? A. Yes.

Q. It went that far? A. Yes.

Q. What did you understand them to mean when they referred to an agreement to respect the contracts? A. I judged that they had an understanding between the two leagues that they would respect each other's contracts.

Q. Does that mean then that the Federal League would enter into an arrangement by which it would agree to give effect
842 to the reservations of players? A. No, I should not say so.

Q. With the other two organizations? A. No. Speaking of legal contracts I don't think the Federal League ever respected the reserve clause in contracts; I mean me never looked upon it as legal.

Q. They did not need a contract, did they, to respect agreements that were enforceable in courts? A. They did not what? A contract?

Q. They did not need any contract between the leagues to respect the contracts which the courts would protect? A. If they had a working agreement I should not think they would need any.

Q. Are you able to tell us a little more specifically what it was that you said to your constituents at home when you got back? A. No. As I remember it the most of the discussion, Mr. Pepper, was about the lease with Weeghman, because as I say we were much exercised about that because Weeghman was in a position to dump the league. Before I went to Chicago I had gone to Mr. Ward—it was through him that I had learned——

Q. I will ask you about that in a moment, Mr. Rasin. But at present I want to inquire what it was that you thought sufficiently important to report to your board in relation to a then pending negotiation between the Federal League and the two major leagues? A. I think I have expressed that in answer to Mr. Marbury's question about as fully as I could, that they were attempting to form some working basis——

Q. Who was attempting? A. Mr. Gilmore. I understand that the Federal League officials and organized baseball—whether it was our initiative or theirs I don't know. I would rather assume it was Weeghman's and Gilmore's.

843 Q. On Gilmore's initiative? A. I should say so.

Q. Your general impression was that Mr. Gilmore and his associates had approached the other people? A. I do not say associates because I don't know whether it was authorized, or anything about it. But I know when I was out there he told me, Weeghman told me—I asked them what all this talk was about, about Weeghman buying the Cubs, and one thing and another. They denied it and said it had all emanated from their efforts to form a working basis between organized baseball and the Federal League in which they would respect contracts and keep out of court, which they thought was hurting the game.

Q. Your general impression then is that Mr. Gilmore and Mr. Weeghman had in some way initiated a conference or negotiation with the representatives of organized ball looking to an agreement for mutual respect of contracts rights and to keep out of court? A. Yes.

Q. That was your understanding? A. Yes.

Q. Is that substantially what you said to your directors when you got back? A. Yes, I should think it was.

Q. What did Mr. Janney say? A. I think Mr. Janney explained probably more fully about the lease with Weeghman. That is really what we went out for, as he had taken it up with Weeghman's lawyer, and I presume——

Q. We are coming to that in a minute. I am asking you what Mr. Janney said at this directors' meeting respecting this peace agreement that was being negotiated. A. As I say I don't know that he said anything about it. If he did I am sure it was along the same line that I had said.

844 Q. Think about it. It is an important matter. I want you to recall the meeting. A. I have been thinking about it.

Q. Where did the meeting take place? A. Union Trust Building, their offices.

Q. And there was a fairly full attendance of directors? A. Yes, as I remember.

Q. Who intro-*cued* the subject of this Federal League and Organized ball negotiations? A. I should think I did probably; I was chairman of the meeting, as I remember it.

Q. Did you call on Mr. Janney to make a report on that subject? A. I don't remember that, Mr. Pepper.

Q. Did you make the report yourself? A. As I say, I don't remember, but I presume I was the one that probably made the report on our trip to Chicago.

Q. Cannot you—— A. The results of our trip.

Q. Can't you go beyond presumption in a matter of this sort? A. No, I really could not.

Q. Then you don't really know who made the statement which is the subject of this minute? A. Yes, I said that I am sure that I made the statement and I thought Mr. Janney had reported to

the board about the lease, because he was a lawyer and had taken it up with Mr. Weeghman.

Q. I realize how acceptable it is to talk about that lease part of the proposition, and we are coming to that in a minute. I want to confine your answer now to the other. I want to know whether you can tell us definitely—there is no mystery about it; just tell us plain up and down—whether you are able to say now that you are the person that made the report on that subject of the peace negotiation in Chicago. A. Yes, I should think I did.

845 Mr. Marbury: He has answered that question three times.

Mr. Pepper: He said clearly on two previous occasions that he presumed he had. I wanted to know whether it went beyond presumption.

The Witness: Yes, I should say it did, because my talks with Gilmore and Weeghman were not in the presence of Mr. Janney.

By Mr. Pepper:

Q. Yes. Now, Mr. Rasin, did you undertake, at greater length than you have stated here to repeat what had happened*ed*? A. No, sir.

Q. What was the relevancy of the information that you brought back to your directors if it did not go beyond what you have last stated? Why did you mention it at all? A. Because there had been so much talk in the papers about Weeghman in Chicago selling and dumping us out, and making some pact with the National League, that we were naturally very much exercised over it, and more so when we found out that Weeghman's lease was not in the hands of our league.

Q. How did you set their minds at rest on that anxious matter by what you told them? A. I told them it was all the information we got. We were never in any position to question anything they said, because Baltimore, I as president of the Baltimore club, never in any way negotiated with organized baseball.

Q. Mr. Rasin, did Mr. Gilmore tell you whom he and Mr. Weeghman had conferred with on the part of organized baseball? A. He never told me. He said it was a condition they were trying—they were trying to bring about that condition, as I stated. If he did I don't remember it.

Q. With regard to the lease matter, as I understand it, it was part of your arrangement that all the leases of all the Federal League parks were to be assigned over to the Central organization?

846 A. Yes, sir.

Q. I think you said in chief that that meant practically putting them into the control of Gilmore, did it not? A. Well, of the central body of which he was president.

Q. He ran the central body, did he not? A. Well, yes, I am afraid he did.

Q. And the same thing was true about the stock in the constituent clubs, was it not? That was all assigned back to the central organization? A. The stock?

Q. The stock held by the constituent clubs in the central organization. A. I don't know.

Q. You remember, don't you, that the stock held by Baltimore in the Federal League Club of Indiana was assigned back with your lease? A. No, I am not sure of that.

Q. Well, the players' contracts were assigned back in the same way, were they not? A. Yes. It probably was so. But you ask me to swear to it and I really don't know.

Q. You were president of the club, and you went to Chicago to see if the arrangement was carried through as to its details as to any other club? A. Yes.

Q. I am asking you what the arrangement as a whole was. A. As I say, I am not sure about the stock. I understood it was assigned to the club——

Q. But you are sure it applied to the leases? A. Yes.

Q. And to the contracts of the several constituent clubs with players? A. Yes.

847 Mr. Pepper: That is all.

(Witness excused.)

Counsel for plaintiff thereupon offered, and there was received in evidence, letter dated June 18, 1917, addressed to Chester N. Farr, Jr., and others by Geo. W. Pepper and others, which reads as follows:

Philadelphia, June 18, 1917.

FEDERAL BASE BALL CLUB OF BALTIMORE

vs.

PHILADELPHIA NATIONAL LEAGUE BASEBALL CLUB et al.

Chester N. Farr, Jr., Esq., Stuart S. Janney, Esq., and L. Edwin Goldman, Esq.,
1018 Real Estate Trust Building.
Philadelphia, Pa.

DEAR SIRS:

We are duly in receipt of your communication of June 15th.

We believe you realize that the agreements made in December, 1915, were entered into by our clients only after the receipt by them of definite assurances that the gentlemen representing the Federal League had authority to act for all its constituent clubs. Our clients had no knowledge of the internal relationships of the members of the Federal League and can assume no responsibility for the acts of Federal League officers which you allege to have been to prejudice to the rights of the Baltimore Club. We are, however, making note of your protest and will give it careful consideration

if and when any demand is made upon our clients for a consummation of the so-called "Peace Agreement".

Yours very truly,

SAMUEL M. CLEMENT, JR.
GEO. W. PEPPER.
FRANK P. PRICHARD.

848 Plaintiff's counsel then offered, and there was received in evidence, letter dated June 19, 1917, addressed to Chester N. Farr, Jr., and others by Geo. W. Pepper, which reads as follows:

June 19, 1917.

BALTIMORE FEDERAL LEAGUE BASEBALL CLUB

vs.

PHILA. NATIONAL LEAGUE BASEBALL CLUB et al.

Chester N. Farr, Jr., Esq., Stuart S. Janney, Esq., L. Edwin Goldman, Esq.,
1018 Real Estate Trust Building,
Philadelphia, Pa.

DEAR SIR-:

In further reference to your communication of June 15th, we desire to make it clear that we cannot give to your protest any other effect than a mere notice of claim. We do not wish our letter of June 18th to be construed as an undertaking on our part to suspend or withhold payment of such sums, if any, as may properly be payable by our clients under the Peace Agreement. Unless you take some immediate step to make your protest effective you must run the risk of a payment by our clients if and when a demand for payment is made.

This letter is sent to you after conference with my associates.

Yours very truly,

G. W. PEPPER.

The plaintiff thereupon closed its case.

The above was in substance all of the evidence offered
849 at the trial.

The insertion herein in extenso of the National Association Agreement of the National Association of Professional Base Ball Leagues, with rules and regulations of the National Board, dated January 1, 1917; and the opinions in full of the National Commission in Cases Nos. 1291 Kauff, 1274 Plank, 1280 Territorial Status of the Rock Island Club, 1290 Compton, 1297 Dickson, 1298 Sisler and 1317 Love, instead of including herein the legal import and effect of such documents; the cross-examination in extenso by Q. and A. of witnesses Gilmore, Herrmann, Johnson and Heydler; the re-cross-examination of the witness Hanlon and the direct examination of the witness Rasin on being recalled, instead of the substance

thereof, are inserted upon the insistence of counsel for the plaintiff, over the objection of counsel for the defendants, by direction of the Court.

At the close of all the evidence, counsel for the defendants moved the Court to direct a verdict for the defendants, which motion was by the Court overruled, to which ruling defendants' counsel then and there excepted, and such exception was duly noted on the records of the Court.

850 Thereupon counsel for the plaintiff requested, and the court granted, the following instructions to the jury on behalf of the plaintiff, to-wit:

Plaintiff's Prayer No. 2.

No evidence has been adduced in this case legally sufficient to entitle the jury to find that the Baltimore Club ever became a party to the combination in restraint of trade, or the conspiracy to restrain trade, or the monopoly or attempt to monopolize, charged against the defendants in this case.

Plaintiff's Prayer No. 3.

The jury are instructed that the defendants having attempted to monopolize the business of professional base ball exhibitions, the question as to whether the system established by the defendants and others under the National Agreement of 1903, and known as Organized Ball, was beneficial or injurious either to the players or to the public in any respect, is entirely immaterial.

The law forbids monopolizing or attempting to monopolize any part of Interstate Commerce and no monopoly or attempt at monopolizing can be justified on the ground that it is beneficial to anybody, therefore, the jury must exclude from their consideration all the testimony offered in this case on behalf of the defendants tending to show that players are generously treated by Organized Ball, or that their salaries are high, or that they are well-disciplined, they are better behaved, less disposed to rowdyism, or that they are prevented from violating their contracts, or that better games are played or that the conduct of the business by the Clubs is made easier and more convenient and less expensive than it would be but for the monopolistic system.

851 Plaintiff's Prayer No. 4.

No evidence has been adduced in this case which would entitle the jury to find that the plaintiff, the Federal Base Ball Club of Baltimore, ever authorized the witness Janney, or the witness Rasin, or the witness Gilmore, or any one else, to represent it in any effort to secure a franchise in, or in any way become party to the system known as Organized Ball, and the jury are instructed that even though they should find from the evidence, that at the time of the making of the so-called Peace Agreement of December 22, 1915, the signers

of said agreement, to wit, John K. Tener, President National League, and Ban B. Johnson, President American League, really believed that James A. Gilmore, President of the Federal League of Professional Base Ball Clubs, had authority from the Federal Base Ball Club of Baltimore to represent it and bind it to the terms of said agreement. That fact would constitute no defense to this action, and all the testimony as to statements made by Gilmore or others whether in or out of the presence of Mr. Rasin or Mr. Janney or Mr. Hanlon, should be disregarded by the jury.

The law known as the Sherman Act, gives to any person who is injured in his business by reason of the doing of anything forbidden by said act, including the monopolizing or attempting to monopolize Interstate Commerce, a right to recover damages against the persons guilty of such violation and causing said damages, and even though the jury believe that the motive which the defendants had in making the so-called Peace Agreement of December 22, 1915, was to help the Baltimore Club, inasmuch as there is no evidence in the case that the Baltimore Club or any one authorized to
852 act for it, to that end assented to that agreement, therefore even if there were such belief it would constitute no defense to this action.

Plaintiff's Prayer No. 5.

The jury are instructed that in determining whether or not the plaintiff was injured by the acts of the defendants done in pursuance of their attempt to monopolize the business of professional base ball, they are not concerned with the question as to whether or not the defendants committed said acts with the definite and specific purpose to injure the said plaintiff, for the jury are instructed that every one is presumed in law to intend the natural and ordinary consequences of his acts, and if the natural consequences of the said acts of the defendants, particularly the making of the Peace Agreements of December 13, 1915, and December 22, 1915, was to injure or destroy the business of the plaintiff, then the said defendants are liable for said injury, no matter what may have been their motive, whether good or bad, in entering into said Peace Agreements, and no matter whether they may have thought or believed that they were benefitting the said plaintiff by entering into said contracts.

Plaintiff's Prayer No. 6.

Even if the jury believe from the evidence that in sending the letter signed by its attorneys, dated June 15, 1917, to Messrs. Pepper, Prichard & Clements, attorneys for the defendant, the Baltimore Club was making an effort to have the proceeds of the sales of property and franchises of the Federal League Clubs to the de-
853 fendants, provided for in the so-called Peace Agreement of December, 1915, retained in the possession of the defendants in order that the Baltimore Club might thereafter prosecute a claim against said proceeds if it elected so to do, inasmuch as it ap-

pears from the uncontraverted evidence in the case that it never did in point of fact elect to make any such claim or to assert any claim to a share in the proceeds of said agreement, but on the contrary brought suit against the defendants to recover damages for the making of said agreement, the fact that said letter was sent by the plaintiff's attorneys constitutes no defense whatever for this action and should be excluded from the consideration of the jury.

To the granting of said prayers, and each of them, the defendants then and there objected, which objections were overruled by the court and exceptions duly noted on the minutes thereof.

Thereupon the defendants prayed the court to instruct the jury as follows:

Defendants' Prayer No. 1.

The defendants pray the court to instruct the jury as follows:

Under all the evidence the court directs you to find a general verdict for all the defendants.

Defendants' Prayer No. 2.

The defendants pray the court to instruct the jury as follows:

The charge as disclosed by the declaration being a conspiracy on the part of the other defendants with Gilmore, Sinclair and Weeghman to injure or destroy the plaintiff, evidence that Gilmore, Sinclair and Weeghman claimed to the other defendants to represent the plaintiff tends to falsify the conspiracy charge. If, therefore, you find that the defendants other than Gilmore, Sinclair and Weeghman contracted with the Federal League in the good faith belief that they were contracting with representatives of the plaintiff, the court instructs you that there can be no recovery against said defendants under the declaration as framed, and that your verdict, in that event, must be a general verdict for all the defendants.

Defendants' Prayer No. 3.

The defendants pray the court to instruct the jury as follows:

The charge being conspiracy to injure or destroy the plaintiff, and to induce other constituent clubs in the Federal League to desert the plaintiff, evidence that the defendants other than Gilmore, Sinclair and Weeghman acted in good faith and without intent to injure the plaintiff tends to negative the charge of conspiracy as laid. If, therefore, you find from the evidence that representatives of the Federal League, in the presence and hearing of President Rasin, asserted their authority to act for the plaintiff, and that Rasin failed to contradict or correct them; and that the defendants other than Gilmore, Sinclair and Weeghman entered into the peace agreement of December 22, 1915, in reliance upon said assertion, the Court in-

structs you that there can be no recovery against said defend-
855 ants under the declaration as framed, and that your verdict,
in that event, should be a general verdict for all the defend-
ants.

Defendants' Prayer No. 4.

The defendants pray the court to instruct the jury as follows:

It appears from the evidence that the President of the plaintiff had authority to transact the business of its corporation between meetings of the Board, and that on the 25th day of October, 1914, he was by his Board elected a member of the Board of Managers of the Federal League Club of Indiana to represent the Baltimore club for the years 1914 and 1915. It also appears from the evidence that Messrs. Rasin and Janney, at a meeting of the plaintiff's Board on the 11th day of November, 1914, reported to such meeting the then state of the negotiations with the American and National Leagues for peace. You may take these facts into consideration, and also the things said and done by Mr. Janney in his capacity as attorney for the plaintiff, including the facts that no meeting of the plaintiff's Board was called by the President or by Mr. Janney after the important conference in New York and before the stockholders' meeting held January 27, 1916, and that without any such meeting or consultation they in the interval rejected an offer to pay the plaintiff a large sum of money; and if you find that Rasin and Janney were actually transacting the business of the plaintiff in December, 1915, and January, 1916, and if you find that at that time they sought to acquire, wholly or in part, for the plaintiff a major league franchise in so-called
organized ball, with intent thus to become a part of the com-
856 bination now alleged to be illegal, the court instructs you that
under such circumstances the plaintiff could not recover dam-
ages from the defendants, and that your verdict, in that event, should be a general verdict for all the defendants.

Defendants' Prayer No. 5.

Whether or not the plaintiff is bound by the terms of the peace agreement which resulted from the Waldorf-Astoria conference, the court instructs you that if the consummation of the agreement was an offense against the anti-trust act, the negotiation which led up to it was likewise illegal; and if you find that the president and attorney of the plaintiff took part in this negotiation with intent to report the agreement favorably to the plaintiff's directors or stockholders, had it proved satisfactory, the court instructs you that such participation precludes the plaintiff from recovering damages for the making of the agreement as actually made, and that under such circumstances your verdict must be for the defendants.

Defendants' Prayer No. 6.

If you find from all the evidence that the defendants other than Gilmore, Sinclair and Weeghman, collectively or individually have

not signed up or reserved more skilled players than they needed for the use of their several clubs, and have not attempted to prevent players from entering the service of competitive organizations except where contracts were violated in so doing, and except through the operation of the ineligibility rule in cases where players ignored their reservations, the court instructs you that the system of
857 the defendants can not be regarded as a monopoly, or as an attempt to create a monopoly; or as a combination in restraint of commerce, and that under such circumstances your verdict should be a general verdict for all the defendants.

## Defendants' Prayer No. 7.

If, from all the evidence, you infer that the failure of the Federal League in general and the plaintiff in particular to continue in business was not due to things said or done by the defendants, but was due to mistakes in business management, to the nature of its circuits, the character of its leaders, the quality of its teams, the lack of a supply of skilled players sufficient for the needs of three major leagues, or was due to some of these causes or to others, for none of which the defendants were in your judgment responsible, then the court instructs you that under such circumstances your verdict should be a general verdict for all the defendants.

## Defendants' Prayer No. 8.

If you were to find that the system known as organized ball is a monopoly or attempted monopoly of interstate commerce in baseball, and if you find from the evidence that the Federal League was organized on substantially the same lines and for substantially the same purposes as the National and American Leagues, and that its size and influence were such as substantially to affect the state of the market for skilled ball players, the Court instructs you that under such circumtsances the plaintiff's organization would involve an attempt to monopolize or restrain a part of the commerce be-
858 tween the States, that the plaintiff is not entitled to recover damages for alleged injury to an illegal business, and that under such circumstances your verdict must be for the defendants.

## Defendants' Prayer No. 9.

The jury are instructed that when the plaintiff embarked upon the business for which it was organized it knew the defendants, known as Organized Baseball, were engaged in the conduct of its business in the same manner as during the period of the existence of plaintiff corporation. This fact should be considered with the other circumstances of this case in determining to what facts the damage, if any, which plaintiff sustained was attributable; and unless the jury find from a preponderance of the evidence that plaintiff was damaged by defendants' acts, and not by reason of inherent weaknesses, bad management or mistake of plaintiff corporation and

the league of which it was a member, their verdict should be for the defendants.

Defendants' Prayer No. 10.

The jury are instructed that the plaintiff does not occupy the same position as a competitor in existence during the period that the power and influence of Organized Baseball was being developed, and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence had been established. The power and influence of Organized Baseball when the plaintiff embarked upon its business is not actionable to
859 the plaintiff, even though the status of Organized Baseball is due in part to methods which are prohibited by the anti-trust act, and before the plaintiff can recover it must be established by a preponderance of the evidence that Organized Baseball used its power oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the trade conditions sought to be protected by the prohibitions of the anti-trust act, and, further, that the plaintiff was injured by reason thereof.

Defendants' Prayer No. 11.

The jury are instructed that their verdict should be for the defendants unless they find from a preponderance of the evidence that as a result of the defendants' acts the plaintiff sustained actual damages in some amount which is susceptible of expression in figures; and such damages must be proved by facts from which their existence is logically inferrable and not conjectures or estimates. They must not be speculative, remote or uncertain.

Defendants' Prayer No. 12.

The jury are instructed that if they find from the evidence that the Federal League was unable to continue its operations as a league before the defendants' acts which are alleged to have damaged the plaintiff, then their verdict should be for the defendants.

860 Defendants' Prayer No. 13.

The jury are instructed that if they find from the preponderance of the evidence that the plaintiff sustained actual damage as the result of defendants' acts, the measure of damages is the extent to which the business of the plaintiff was rendered less valuable by reason of such acts, and is not the amounts invested in plant, equipment and players, or the amount of losses sustained during the conduct of the business.

Defendants' Prayer No. 14.

The jury are instructed that the word "franchise" as used in this case means a right to operate in the Federal League as constituted, and that the words "franchise value" is the value of such right under all the circumstances shown to exist.

The court refused to grant defendants' prayers Nos. 1, 2, 3, 4, 5, 6, 8, 10, 12, 13, and to the refusal of the court to grant said prayers, and each of them, exceptions were severally noted by the defendants, which exceptions were then and there duly entered upon the minutes of the court.

Thereupon the court of its own motion amended defendants' Prayer No. 10, and accordingly instructed the jury as follows:

Defendants' Prayer No. 10 as Amended by the Court.

The jury are instructed that the plaintiff does not occupy the same position as a competitor in existence during the period that the power and influence of Organized Baseball was being developed, and who may have been, during the course of such development, as well as after it had reached the height of its own power,
861 injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence had been established. The power and influence of Organized Baseball when the plaintiff embarked upon its business is not actionable to the plaintiff, although the status of Organized Baseball is due to methods which are prohibited by the anti-trust act, and before the plaintiff can recover it must be established by a preponderance of the evidence that Organized Baseball used its power oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the suppression of open competition and to obstruct the trade conditions sought to be protected by the prohibitions of the anti-trust act, and, further, that the plaintiff was injured by reason thereof.

To the amendment of defendants' said Prayer No. 10 and to instructing the jury in accordance therewith, the defendants, by their counsel, then and there excepted, which exception was duly noted upon the minutes of the court.

Thereupon the court charged the jury as follows:

Court's Instructions.

The Federal Statutes declare that any person who is injured in his business or property by reason of anything done in violation of the anti-trust laws of the United States is entitled to recover damages therefor. The acts of the defendants, alleged and proved, by way

of maintaining the system of organized base ball, constituted
862 in law an attempt to monopolize the business of competitive base ball exhibitions for profit, and, as an inseparable part thereof, to monopolize commerce between the States, and were done in violation of said anti-trust laws. If, and insofar as, such acts injured the plaintiff in its business or property the plaintiff is entitled to compensation. In respect to those acts alleged to have been committed by the defendants with particular reference to the Federal League and for the purpose of removing said league as a competitor by persuading its officers and members to break up the same, if such acts were committed, as charged, for the purpose and with the intent of removing the Federal League as a competitor and thereby perfecting the monopoly attempted to be created by the general system of organized ball before referred to, such acts also were done in violation of said anti-trust laws; and if, and insofar as, they did in fact injure the plaintiff in its business or property, the plaintiff is entitled to recover compensatory damages therefor.

## Charge to the Jury.

The Court. (STAFFORD, *J.*) Gentlemen of the jury, I shall not need to take very much time in submitting this case to you. I shall attempt little beyond reading to you the instructions which have been granted by the Court and framed by the Court, and in explaining perhaps a little more fully the meaning of some of those instructions.

This is a very long declaration, which you will take with you to your room. I think it would not be necessary to go through it allegation by allegation. Much the greater part of it is not dis-
863 puted. It is established as well by the testimony on the part of the defendants as by the testimony on the part of the plaintiff.

I shall call your attention chiefly to the matters in dispute. It became necessary in this case for the Court to take a much larger part in the decision of the case than ordinarily becomes necessary. As you understand, the duty of the Court is to decide all questions of law, and for the jury to decide all questions of fact. Accordingly I had to decide as well as I could the various questions of law which have arisen in the course of the trial, and there are left certain questions of fact for your determination. You are not to be influenced at all in your determination of the questions of fact by the fact that in deciding certain questions of law I decided them in a certain way. That was my duty and I performed it. You have your duty, and you perform that duty without respect to the manner in which I have performed mine.

As has been said — the decision of questions of law, those decisions are for this trial only. They are decided as the law appears to be to the Court, and if the Court has made any error of course it can be corrected and doubtless will be corrected by other courts. You will take the law as it is given to you from the bench. If I have made a mistake of course it can be corrected, but if you make a mistake in your verdict I do not know of any way in which it can be corrected.

Where the question is proper for the decision of the jury and is

submitted to the jury and the jury decides it, the Court cannot interfere unless it is the verdict of passion or prejudice or against the great weight of the evidence. So that you ought to be very
864 careful, and all the more careful because there is practically no appeal from your decision, while there is an appeal from mine.

This declaration, very long as I say, may be divided into two parts. In the first part the plaintiffs have charged the existence and operation of what has been called "organized ball," and I shall adopt that phrase because it is perfectly understood by us all now after the evidence has gone in. That part of the declaration charges the maintenance of this system and its operation, and there seemed to be no dispute among the witnesses, no substantial dispute, no conflict in the evidence, as to what the arrangement or system is and has been, and how it has operated, under the control of the defendants.

So that the question of law arose whether that did constitute an attempt to monopolize the business in question, and as an inseparable part thereof, to monopolize a part of interstate commerce. I felt obliged to hold as matter of law that it did.

It is further alleged that after the Federal League came into the field it was crushed out of existence by the operation of this system of organized ball through the features of it which have led the Court to consider that it was a monopoly, principally the reserve clause and the ineligible list features.

It is a question of fact for you to decide whether the Federal League was thus destroyed, by the conduct of the defendants in operating this system which we call organized ball with these features which the Court has held to make it an attempt at monopoly. That is speaking of the general operation of the system.

865 The other part of the declaration deals with acts which it is charged the defendants committed with particular reference to the Federal League, and for the purpose and with the intent of removing the Federal League as a competitor.

As to those acts, culminating in the so-called peace pact, you are to consider and decide whether they did have the effect charged.

You have heard the argument upon that subject pro and con very clearly made by Mr. Marbury and Mr. Douglas on the one hand and by Mr. Pepper on the other, as to whether whatever disaster happened to the Federal League was due to the operation of this system and the features which the Court has held to constitute it a monopoly; or whether the loss and disaster, whatever it was, was due to something else.

The burden is upon the plaintiff to make out its allegation that the loss was due, the disruption was due, to the causes alleged.

I think if you take the case in those two aspects, the declaration in those two aspects, you will be able to deal with the question of liability, which is the first question that arises, and if you find for the plaintiff then you will have to come to the question of damages, of which I shall speak later.

I attempted to put in more concise form an instruction that you

might use as a guide, and it practically summarizes what I have just said to you—

866 "The Federal Statutes declare that any person who is injured in his business or property by reason of anything done in violation of the anti-trust laws of the United States is entitled to recover damages therefor. The acts of the defendants, alleged and proved, by way of maintaining the system of organized base ball, constituted in law an attempt to monopolize the business of competitive base ball exhibitions for profit, and, as an inseparable part thereof, to monopolize commerce between the States, and were done in violation of said anti-trust laws."

That I hold, you see, as matter of law. Now comes your part:

"If, and in so far as, such acts injured the plaintiff in its business or property, the plaintiff is entitled to compensation. In respect to those acts alleged to have been committed by the defendants with particular reference to the Federal League and for the purpose of removing said league as a competitor by persuading its officers and members to break up the same, if such acts were committed, as charged, for the purpose and with the intent of removing the Federal League as a competitor and thereby perfecting the monopoly attempted to be created by the general system of organized ball before referred to, such acts also were done in violation of said anti-trust laws;"—

That is what I hold as matter of law. Now comes your part:

"—and if, and in so far as, they did in fact injure the plaintiff in its business or property, the plaintiff is entitled to recover compensatory damages therefor."

867 You are to remember that in this case the plaintiff is not the Federal League nor its officers. The plaintiff is not Mr. Rasin nor Mr. Hanlon nor Mr. Goldman, nor any other officer of the Baltimore club. The plaintiff is the Baltimore club as a corporation, representing the rights of its stockholders. Consequently acts and sayings which might have prevented a recovery if the plaintiff had been some one else, had been Mr. Hanlon or Mr. Rasin or Mr. Goldman or Mr. Janney—cannot bind the corporation plaintiff and its stockholders, cannot prevent a recovery by the plaintiff if the plaintiff is otherwise entitled to recover, unless those acts are the authorized acts of the corporation.

So that it became necessary for the Court to decide upon the admitted facts whether the corporation was bound, and the Court held that there was nothing here that could bind the corporation itself and the rights of its stockholders to prevent a recovery by reason of anything that these officers had done or attempted to do or said.

So that the question is not whether the Federal League was injured in its property or business by unlawful acts of the defendants charged in the declaration, but whether the Baltimore club was so injured in its property or business.

I will read to you, although some of them have already been read in your hearing, the instructions that have been granted on the part of the plaintiff:

"No evidence has been adduced in this case legally sufficient to es-

title the jury to find that the Baltimore Club ever became a party to the combination in restraint of trade, or the conspiracy to restrain
trade, or the monopoly or attempt to monopolize, charged
868 against the defendants in this case."

"The jury are instructed that the defendants having attempted to monopolize the business of professional base ball exhibitions, the question as to whether the system established by the defendants and others under the National Agreement of 1903, and known as Organized Ball, was beneficial or injurious either to the players or to the public in any respect, is entirely immaterial.

"The law forbids monopolizing or attempting to monopolize any part of Interstate Commerce and no monopoly or attempt at monopolizing can be justified on the ground that it is beneficial to anybody, therefore, the jury must exclude from their consideration all the testimony offered in this case on behalf of the defendants tending to show that players are generously treated by Organized Ball, or that their salaries are high, or that they are well-disciplined, they are better behaved, less disposed to rowdyism, or that they are prevented from violating their contracts, or that better games are played or that the conduct of the business by the Clubs is made easier and more convenient and less expensive than it would be but for the monopolistic system."

The Court heard about all the evidence that was offered tending to show how the system in fact operated, but felt obliged, after hearing it all, to decide the question of law in the way already indicated, so that you have no further concern with these elements that I have just referred to.

"No evidence has been adduced in this case which would entitle
the jury to find that the plaintiff, the Federal Base Ball Club
869 of Baltimore, ever authorized the witness Janney, or the witness Rasin, or the witness Gilmore, or any one else, to represent it in any effort to secure a franchise in, or in any way become a party to the system known as Organized Ball, and the jury are instructed that even though they should find from the evidence, that at the time of the making of the so-called Peace Agreement of December 22, 1915, the signers of said agreement to-wit, John K. Tener, President of the National League, and Ban B. Johnson, President American League, really believed that James A. Gilmore, President of the Federal League of Professional Baseball Clubs, had authority from the Federal Base Ball Club of Baltimore to represent it and bind it to the terms of said agreement. That fact would constitute no defense to this action, and all the testimony as to statements made by Gilmore or others whether in or out of the presence of Mr. Rasin or Mr. Janney or Mr. Hanlon, should be disregarded by the jury."

That is of course so far as relates to that question.

"The law known as the Sherman Act, gives to any person who is injured in his business by reason of the doing of anything forbidden by said act, including the monopolizing or attempting to monopolize Interstate Commerce, a right to recover damages against the persons guilty of such violation and causing said damages, and even though the jury believe that the motive which the defendants had in mak-

ing the so-called Peace Agreement of December 22, 1915, was to help the Baltimore Club, inasmuch as there is no evidence in the case that the Baltimore Club or any one authorized to act for it, to that end assented to that agreement, therefore even if there were such belief it would constitute no defense to this action."

870 That you are not to consider at all in conflict with the previous statement of the Court that as to the acts alleged to have been done, with particular reference to the Federal League, it is necessary that you should find they were done for the purpose and with the intent of removing the Federal League as a competitor.

"The jury are instructed that in determining whether or not the plaintiff was injured by the acts of the defendants done in pursuance of their attempt to monopolize the business of professional baseball, they are not concerned with the question as to whether or not the defendants committed said acts with the definite and specific purpose to injure the said plaintiff, for the jury are instructed that every one is presumed in law to intend the natural and ordinary consequences of his acts, and if the natural consequence of the said acts of the defendants, particularly the making of the Peace Agreement of December 13, 1915, and December 22, 1915, was to injure or destroy the business of the plaintiff, then the said defendants are liable for said injury, no matter what may have been their motive, whether good or bad, in entering into said Peace Agreement, and no matter whether they may have thought or believed that they were benefiting the said plaintiff by entering into said contracts."

That does not conflict with the previous statement, and you are not to understand that it conflicts with the previous statement, namely, that it is necessary for the plaintiff to prove that the acts charged to have been done, with particular reference to the Federal League, were done for the purpose and with the intent of removing the league as a competitor.

871 "Even if the jury believe from the evidence that in sending the letter signed by its attorneys, dated June 15, 1917, to Messrs. Pepper, Pritchard & Clements, attorneys for the defendants the Baltimore Club was making an effort to have the proceeds of the sales of property and franchises of the Federal League Clubs by the defendants, provided for in the so-called Peace Agreement of December, 1915, retained in the possession of the defendants in order that the Baltimore Club might thereafter prosecute a claim against said proceeds if it elected so to do, inasmuch as it appears from the uncontraverted evidence in the case that it never did in point of fact elect to make any such claim or to assert any claim to a share in the proceeds of said agreements, but on the contrary brought suit against the defendants to recover damages for the making of said agreement, the fact that said letter was sent by the plaintiff's attorneys constitutes no defense whatever for this action and should be excluded from the consideration of the jury."

There were certain instructions granted as requested by the defendants which I will call your attention to. Most of the instructions presented by the defendants, I will say, were presented for the purpose of saving upon the record the questions which the Court

had already disposed of. I read defendants' Prayer No. 7, which has been granted, as follows:

"If, from all the evidence, you infer that the failure of the Federal League in general and the plaintiff in particular to continue in business was not due to things said or done by the defendants, but was due to mistakes in business management, to the nature of its circuits, the character of its leaders, the quality of its teams,
872 the lack of a supply of skilled players sufficient for the needs of three major leagues, or was due to some of these causes or to others for none of which the defendants were in your judgment responsible, then the court instructs you that under such circumstances your verdict should be a general verdict for all the defendants."

That is a sound proposition of law; it is not disputed, and you have heard the argument addressed to you upon that subject. You are to give careful consideration to it. The burden of course is upon the plaintiff in all cases; it is upon the plaintiff in this case, and it is upon the plaintiff in respect to this subject. Unless the evidence preponderates in favor of the plaintiff upon this subject then you ought to render a verdict for all of the defendants.

Prayer No. 9 of the defendants reads as follows:

"The jury are instructed that when the plaintiff embarked upon the business for which it was organized it knew the defendants, known as Organized Baseball, were engaged in the conduct of its business in the same manner as during the period of the existence of plaintiff corporation. This fact should be considered with the other circumstances of this case in determining to what facts the damage, if any, which plaintiff sustained was attributable; and unless the jury find from a preponderance of the evidence that plaintiff was damaged by defendants' acts, and not by reason of inherent weaknesses, bad management or mistake of plaintiff corporation and the league of which it was a member, their verdict should be for the defendants."

Defendants' prayer No. 11:

"The jury are instructed that their verdict should be for
873 the defendant unless they find from a preponderance of the evidence that as a result of the defendants' acts the plaintiff sustained actual damages in some amount which is susceptible of expression in figures; and such damages must be proved by facts from which their existence is logically inferrable and not by conjecture or estimates. They must not be speculative, remote or uncertain."

In other words, gentlemen, the burden is upon the plaintiff with respect to this matter of damages, first with respect to showing that there was in fact some damage, some injury, to the plaintiff, of its property or business; and next the amount of that injury, and consequently of the damage to which the plaintiff is entitled. The burden is upon the plaintiff, I say, to make that out by a fair preponderance of the evidence as much as to make out any other essential part of its case. And you are to go no further than the evidence leads you.

Defendants' prayer No. 14:

"The jury are instructed that the word 'franchise' as used in this case means a right to operate in the Federal League as constituted, and that the words 'franchise value' is the value of such right under all the circumstances shown to exist."

Of course, as has been said and admitted in argument, that does not mean the value of the franchise as reduced by reason of illegal acts of the defendants but the value of the franchise as viewed in the free field—that is, with both parties observing the law, the plaintiff as well as the defendants. Those are the circumstances that you are to have in your mind in determining the franchise value.

874 I will read an instruction which was somewhat modified by the Court. It was numbered 10 as presented by the defendants:

"The jury are instructed that the plaintiff does not occupy the same position as a competitor in existence during the period that the power and influence of Organized Baseball was being developed, and who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence had been established. The power and influence of Organized Baseball when the plaintiff embarked upon its business is not actionable to the plaintiff, even though the status of Organized Baseball is due to methods which are prohibited by the anti-trust act, and before the plaintiff can recover it must be established by a preponderance of the evidence that Organized Baseball used its power oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the oppression of open competition and to obstruct the trade conditions sought to be protected by the prohibitions of the anti-trust act, and, further that the plaintiff was injured by reason thereof."

That is, notwithstanding the Court has held that this system of organized baseball, considering the method by which it had operated under the system, had become and was an attempt to monopolize, and was in violation of the anti-trust law, but if the plaintiff was not injured by the operation of the illegal features of that

875 system, after the Federal League came into existence, it could have no right to recover. The plaintiff club must have been injured in its property or business by reason of the operation of these illegal features in the defendants' system after the Federal League came into existence.

That brings me to speak now upon the theory that you find for the plaintiff, because if you do not find for the plaintiff upon the issues that I have outlined, your verdict, as I have stated, will be for the defendants, and you will have no further trouble in the case. But as I do not know what conclusion you may reach upon those questions, it is necessary for me to assume, for the moment, that you find in favor of the plaintiff and will need to know the law as to the measure of damages.

The plaintiff claims that it was injured in its business and property in several respects. It claims that its business was a business of value, and that by reason of the illegal acts of the defendants, charged and proved, as the plaintiff claims, that the business value was very much depreciated or entirely destroyed.

It is for you to say what the value of that business was under the rules heretofore given you in this charge. Particular reference is made to the franchise as representing the right of the plaintiff to carry on the business within the Federal League. It is claimed that that representative of the value of its business was injured or destroyed.

You have heard the evidence and the argument upon that subject, and it is a mere question of fact for you, what the franchise was worth in legal conditions; and how much if at all its value was reduced by the illegal acts of the defendants, if you find that
876 it was at all reduced by those acts.

The plaintiff also claims that it was injured in its property, that is its physical property, the real estate, the ball park and stand. You have heard the evidence also upon that subject, and you have a right to consider in determining the value of that property what the property cost, both the park and the equipment—not that they are conclusive but they are evidence for you to weigh and consider in the question of value.

Then you are to determine whether the plaintiff was injured in its property by reason of the illegal acts of the defendants charged and proved, and if so to what extent.

And you are also to consider in estimating the question of damages such liabilities as you find have been incurred by the plaintiff as the direct and necessary result of the destruction of the business of the plaintiff by the defendants, if you find that it was so destroyed, and if so destroyed by the alleged and proved acts of the defendants.

Just a few words in closing. The position of umpire is not always a popular one. You and I have been obliged to act as umpires in this case; and we must perform our duty as best we may.

I am very anxious that whatever verdict you render shall be the expression of your reason only, not of any passion or prejudice or sympathy or favor. If your feeling has been aroused by the argument of counsel upon either side, if you feel any anger toward any witness or any contempt for any position that has been taken, ban-
877 ish that from your mind. Consider the questions of fact which I have tried to submit to you and which counsel have argued with great thoroughness and ability, and it seems to me with eminent fairness upon both sides. I do not know that I ever heard a case more fairly tried.

Now, take it up with your reason only and decide these questions as the evidence bears upon your mind.

It is for you alone to decide what credence you will give to the testimony of witnesses, which witnesses you believe, and to what extent you believe them. The Court cannot assist you or lead you or guide you or influence you in any way with respect to those ques-

tions, any more than you have any right to influence the court wi
respect to the decision of questions of law.

But decide the case merely, without passion or prejudice or sy
pathy, without reference to any outside questions, without refere
to what people outside the court house might think of your decisi
You have heard all the evidence, you have seen all the witnes
and you are better prepared than any one else to decide these qu
tions of fact justly and rightly; and the parties and the Court l
to you to do it.

Thereupon the following occurred:

Mr. Pepper: May I ask, sir, an exception to so much of the cha
not included in the prayer as was included in the summary or me
orandum that his Honor read to the jury.

The Court: The prayer numbered 10?

Mr. Pepper: Yes, sir.

The Court: Yes.

Mr. Pepper: Does your Honor think it proper to call the attent
of the jury to the fact that some limited use, if any, can be made
them of the so-called Johnson interview, in view of the fact that
statements in that interview, if they had any effect, had an ef
prejudicial to the interests of those three persons who are now
cluded among the defendants. We have rather a remarkable s
ation in that regard.

The Court: I have not granted any instruction upon t
878 subject, nor referred to it in my charge to the jury, an
should not wish to refer to it as the basis of any recovery
damages—that is, of any damages flowing from those statement
I think the only use the jury can make of those statements i
verbal acts of Mr. Johnson, and as indicating his position with re
ence to the baseball situation, and so far as they find that—well, t
could not use that interview as evidence that the other defend
coincided with him.

Does that cover the point?

Mr. Pepper: That covers the point, sir.

And finally, with an additional apology for trespassing upon y
time, sir, may I ask exception to so much of the charge as em
sizes distinction between the Baltimore Club, the plaintiff, and
Federal League, unless your Honor were to see fit to supplemen
by a reference to what I understood to be the undisputed fact,
Mr. Rasin was elected by his club a member of the board of m
agers of the Federal League, which, under the evidence, had
management of the affairs of the Federal League as a whole, as
tinguished from the particular interests of the constituent clubs

The Court: The charge represents the Court's view of the la
that respect; and an exception may be noted. I do not ca
modify it.

Mr. Pepper: I thank you, sir.

The exception so taken was noted upon the minutes of the C

Thereupon the jury retired to consider of its verdict, and fou
verdict in favor of the plaintiff against the defendants in the su
Eighty Thousand Dollars ($80,000).

879 Thereafter, to-wit, on the 16th day of April, 1919, the defendants, by their counsel, filed a motion for new trial.

Upon the hearing of the motion for new trial, the Court, to-wit, on the 16th day of May, 1919, overruled the same and entered judgment in favor of the plaintiff, against the defendants, in the sum of Two Hundred and Forty Thousand Dollars ($240,000), with interest from date and costs, and in the further sum of Twenty-four Thousand Dollars ($24,000) as attorneys' fees, in accordance with the provisions of Section 7 of the Act of July 2, 1890, Chapter 647, known as the Sherman Anti-Trust Act.

To the refusal of the Court to grant a new trial, and to the allowance to the plaintiff's attorneys of the sum of Twenty-four Thousand Dollars ($24,000) as attorneys' fees, the defendants, by their attorneys, then and there separately excepted, which exceptions were duly noted upon the minutes of the court.

Be it remembered, that the substance and effect of all of the evidence in this case is contained in the foregoing Bill of Exceptions and all of said exceptions reserved before the jury retired were reserved and duly noted upon the minutes of the court before the jury retired to consider of its verdict, and all of said exceptions reserved after the jury found its verdict against the defendants were reserved and duly noted upon the minutes of the court at the time thereof; and that said Bill of Exceptions is hereby made a part of the record in this case, and at the request of counsel for the defendants said Bill of Exceptions is signed, sealed and settled in duplicate now for then this fourth day of February, 1920.

WENDELL P. STAFFORD,
*Justice.*

Endorsed on cover: District of Columbia Supreme Court. No. 3368. The National League of Professional Baseball Clubs et al., appellants, vs. The Federal Baseball Club of Baltimore, Inc. Court of Appeals, District of Columbia. Filed Feb. 25, 1920. Henry W. Hodges, Clerk.

Tuesday, October 12th, A. D. 1920.

* * * * * * *

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

The argument in the above entitled cause was commenced by Mr. George Wharton Pepper, attorney for the appellants, and was continued by Mr. William L. Rawls, attorney for the appellee, and was concluded by Mr. B. S. Minor, attorney for the appellants.

In the Court of Appeals of the District of Columbia.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

*Opinion.*

Mr. Chief Justice Smyth delivered the opinion of the Court:

This is an action for damages under the Sherman Anti-Trust Act (26 Stat. L., 209). The plaintiff, who is appellee here, was awarded a verdict for $80,000, which was trebled under section 7 of the act and a judgment for $240,000, with costs and attorneys' fees, entered against the defendants, who bring the case before us for review.

Appellee is a corporation organized in October, 1913, in Baltimore, for the purpose of giving exhibitions of baseball. Its organization was brought about by the Federal League of Professional Baseball Clubs, which was incorporated in March, 1913, and consisted of eight clubs, of which the appellee was one. One club was located in each of the following cities: Brooklyn, Pittsburgh, Buffalo, Baltimore, St. Louis, Kansas City, Indianapolis, and Chicago. The league issued to each club a franchise that authorized it to conduct competitive baseball games in the league. The league continued in existence, with more or less success, until December, 1915, when an agreement, called the "Peace Agreement," was entered into between it, the National League and the American League of Professional Baseball Clubs. This agreement resulted in the dissolution of the Federal League and all its constituent clubs, save the appellee. The latter refused to become a party to the agreement.

but as there was none of its league clubs left after the dissolution with which to compete, it ceased to operate.

Appellee, asserting that the disbandment of the league and the consequent injury to it were due to acts of the appellants done in violation of sections 1 and 2 of the Sherman Act, instituted this action.

The appellants, defendants below, are: The National League of Professional Baseball Clubs, referred to herein as the National League, an unincorporated association, and its eight incorporated constituent clubs, one of which was established in each of the following cities: New York City, Brooklyn, Philadelphia, Boston, Chicago, St Louis, Pittsburgh, and Cincinnati; also the American League of Professional Baseball Clubs, spoken of hereafter as the American League, an unincorporated association, and, like the National League, having eight constituent clubs, one located in each of these cities: New York City, Boston, Philadelphia, Washington, D. C., Chicago, St. Louis, Detroit and Cleveland; also John K. Tener, President of the National League; Bancroft A. Johnson, President of the American League, and August Herrmann, Chairman of the National Commission, hereafter described. The cities having National League clubs form the baseball circuit for that league, and those having American League Clubs the baseball circuit for that league.

The National League and the American League are generally denominated major leagues. With them are united, by what is called the "National Agreement," the National Association of Professional Baseball Leagues, which consists of a large number of minor leagues of professional baseball similar in structure to the major leagues, but the players have not in general attained as high a degree of skill as that which characterizes major league players. The leagues of the association constitute training fields from which the major leagues draw new players. While the association covers the greater part of the field of professional baseball below the major league grades, yet there are outside of it some professional, many semi-professional and all college and amateur organizations.

Each club of the major leagues obtained a ball ground and equipped it with stands and seats for the accommodation of the public in its home city. Then clubs were organized for profit, but not the leagues. The function of each league was to regulate contests between teams representing the several clubs in the league which compete annually for championship. Baseballs were purchased by each league and sold to its clubs at cost, and each league had a contract with a telegraph company for service and had an income sufficient only to meet necessary expenses. Such unspent funds as it might have were not held for distribution but as a reserve to meet liabilities.

The National Commission, already referred to, is an unincorporated body composed of the presidents of the two leagues and a third person selected by them. It is an administrative body and is not a profit-making concern. The club which wins the championship pennant in any year in one major league competes for the world's championship in that year with the winner of the pennant in the other.

It is one of the functions of the National Commission to regulate these contests. A schedule for each league is arranged by its presidents prior to the beginning of the playing season. During the playing season teams travel by train from place to place, taking with them their uniforms and other paraphernalia of the game.

The National Commission exists by virtue of the National Agreement, heretofore referred to. It is claimed that this agreement has produced the system which constitutes the violation of the Sherman Act complained of. By this agreement players, before they could secure employment in any club operating under it, were required to enter into contracts which, it is alleged, gave the appellants control over practically all available players of sufficient skill to serve in a major league club, and thus the Federal League was unable to secure players capable of producing such exhibitions of baseball as the public demanded; and, in consequence of this inability, disaster came upon the Federal League and its constituent clubs, including the appellee.

The court instructed the jury (*a*) that appellants were engaged in interstate commerce; (*b*) that they attempted to monopolize, and did monopolize, a part of that commerce principally through what is called the "reserve clause" and ineligible list features of certain agreements, but (*c*) left it to the jury to say whether the appellants had conspired together to destroy, and did destroy, the Federal League to the end that they might perfect their monopoly of professional baseball, and whether, if they did so conspire with the effect stated, their act resulted in injury to the appellee.

Did the giving of exhibitions of baseball under the circumstances disclosed in the record constitute trade or commerce within the meaning of the Sherman Act? If it did not, then the act does not apply and the appellee has no right to invoke its provisions.

The Sherman Act, in section 1, declares every contract, combination or conspiracy "in restraint of trade or commerce among the several states * * * to be illegal," and, in section 2, condemns every person who shall monopolize, or attempt to monopolize, or combine with others to monopolize that trade or any part thereof. "The word 'trade,' in its broadest signification, includes not only the business of exchanging commodities by barter, but the business of buying and selling for money, or commerce and traffic generally." May v. Sloan, 101 U. S., 231, 237. It means "the buying as well as the selling of property." United States v. United States Steel Corporation et al., 223 Fed., 55, 177. Webster's Dictionary defines trade as "the act or business of exchanging commodities by barter; the business of buying and selling for money: commerce; traffic; barter;" and says that "commerce, in its simplest signification, means exchange of goods, * * *" It may be said to be trade, traffic or exchange between different places and communities. And, according to the Century Dictionary, commerce is defined as "interchange of goods, merchandise or property of any kind; trade; traffic." "Commerce, briefly stated, is the sale or exchange of commodities." United States v. Swift & Co., 122 Fed., 529. Substantially the same definitions are given in the case of United States v. E.

Knight Co., 156 U. S., 1; Gibbons v. Ogden, 9 Wheat, 1, 189, 190; Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196; In re Charge to Grand Jury, 151 Fed., 834.

Through these definitions runs the idea that trade and commerce require the transfer of something, whether it be persons, commodities, or intelligence from one place or person to another. The concomitant of this concept is the principle approved by the Supreme Court of the United States, that "importation into one State from another is the indispensable element, the test, of interstate commerce." International Textbook Co. v. Pigg, 217 U. S., 91.

The business in which the appellants were engaged, as we have seen, was the giving of exhibitions of baseball. A game of baseball is not susceptible of being transferred. The players, it is true, travel from place to place in interstate commerce, but they are not the game. Not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end. Nothing is transferred in the process to those who patronize it. The exertions of skill and agility which they witness may excite in them pleasurable emotions just as might a view of a beautiful picture or a masterly performance of some drama, but the game effects no exchange of things according to the meaning of "trade and commerce" as defined above.

The transportation in interstate commerce of the players and the paraphernalia used by them was but an incident to the main purpose of the appellants, namely, the production of the game. It was for it they were in business—not for the purpose of transferring players, balls and uniforms. The production of the game was the dominant thing in their activities. In Hooper v. California, 155 U. S., 648, the Supreme Court of the United States was asked to hold that because an insurance corporation in effecting a marine insurance policy used some of the instrumentalities of commerce, it was engaged in that commerce, but the court refused to yield to the argument, and said: "It ignores the real distinction upon which the general rule and its exceptions are based, and which consists in the difference between interstate commerce or the instrumentality thereof on the one side and the mere incidents which may attend the carrying on of such commerce on the other;" and the court held that the business of marine insurance was not commerce, irrespective of the fact that some of its incidents were. Consult also Paul v. Virginia, 75 U. S., 168; New York Life Insurance Co. v. Cravens, 178 U. S., 389. So here, baseball is not commerce, though some of its incidents may be.

Suppose a law firm in the City of Washington sends its members to points in different States to try lawsuits; they would travel, and probably carry briefs and records, in interstate commerce. Could it be correctly said that the firm in the trial of the lawsuits was engaged in trade and commerce? Or take the case of a lecture bureau, which employs persons to deliver lectures before Chautauqua gatherings at points in different States. It would be necessary for the lecturers to travel in interstate commerce in order that they might fulfill their engagements, but would it not be an unreasonable stretch of the ordinary meaning of the words to say that the bureau

was engaged in trade or commerce? If a game of baseball before a concourse of people who pay for the privilege of witnessing it is trade or commerce, then the college teams who play football where an admission fee is charged engage in an act of trade or commerce. But the act is not trade or commerce—it is sport. The fact that the appellants produce baseball games as a source of profit, large or small, can not change the character of the games. They are still sport, not trade.

It has been ruled that the production of grand opera at points in different states according to a prearranged schedule involves "none of the elements of trade or commerce as commonly understood." Metropolitan Opera Co. v. Hammerstein, 147 N. Y. Supp., 535. "Such a transaction," said the court, "is as far removed as possible from the commonly accepted meaning of trade and commerce." In another case it was held that the skill of theatrical players which attracts the public "is not sold; it is merely exhibited for hire," and the fact that the producing corporation "must buy scenery and stage appliances and furniture, which it may afterwards sell again, is of no importance, in determining whether or not the corporation was engaged in trade or commerce. In re Oriental Society, Bankrupt, 104 Fed., 975. As supporting the same principal, see People v. Klaw, 106 N. Y. Supp., 341; American Baseball Club of Chicago v. Chase, 149 N. Y. Supp., 6; Minnesota v. Duluth Board of Trade, 107 Minn., 506; Rohlf v. Kasemeier, 140 Iowa, 182, and State v. Frank, 114 Ark., 47. In the American Baseball Club case the precise question we are considering was passed upon, in a carefully prepared opinion, and it was held that the production of exhibitions of baseball did not constitute trade or commerce. The National Agreement, the rules and regulations adopted pursuant to it, and the players' contracts, complained of in this suit, were all considered by the court in reaching its conclusion.

Much stress is laid by the appellee upon Marienelli v. United Booking Offices, 227 Fed., 165, and International Textbook Co. v. Pigg, ante, but we think they are not in point. In the first case the combination was between a series of theatres and persons engaged in theatrical brokerage, according to which the brokers had the exclusive right of acting for the theaters in booking performances on an interstate schedule. The entire business consisted in the negotiation of a contract to travel and perform. The brokers were not interested in the service rendered or the skill exhibited by the performers. The court stressed this feature and distinguished the case before him from the Hammerstein case, ante, by saying that the trade and commerce element in the case he was considering was essential, while that element in the Hammerstein case was but incidental. For the same reason the Marienelli case is distinguishable from the case before us. In the Pigg case the chief element was the communication of intelligence through instrumentalities of commerce.

This brings us to consider whether or not the restrictions which appellee says resulted in the monopolization denounced by the statute affected illegally the interstate features of appellee's business, that is, the movement of its players and those of the other clubs of the

Federal League and their paraphernalia from place to place in the league's circuit; for it is well settled that persons not engaged in interstate commerce may be guilty of violating the statute by illegally interfering with those who are so engaged. Loewe v. Lawlor, 208 U. S., 274, 297; United States v. Trans-Missouri Freight Association, 166 U. S., 290; Northern Securities Company v. United States, 193 U. S., 197. The statute does not apply "where the trade or commerce affected is interstate, unless the effect thereon is direct, not merely indirect." United States v. Patten, 226 U. S., 525, 542. If the necessary effect is but incidentally or indirectly to restrict the commerce, "while its chief result is to foster the trade and increase the business of those who make and operate it, it is not violative of the law." United States v. Standard Oil Co., 173 Fed., 177, 188; Hopkins v. United States, 171 U. S., 578, 592; Anderson v. United States, 171 U. S., 604, 618; United States v. Joint Traffic Association, 171 U. S., 505, 568; and Addyston Pipe and Steel Co. v. United States, 175 U. S., 211, 244.

Generally speaking, every player was required to contract with his club that he would serve it for one year and would enter into a new contract "for the succeeding season at a salary to be determined by the parties to such contract." The quoted part is spoken of as the "reserve clause," and it is found, in effect, in the contracts of the minor league players as well as in those of the major league players. For his services each player was given a certain consideration, and for consenting to the reserve clause, another consideration, both of which were set forth in his contract. It is provided in the rules adopted by the leagues and in the National Agreement that if a player violates the reserve clause—is guilty of "contract-jumping,"—he shall be punished by being treated as ineligible to serve in any club of the leagues until he has been formally reinstated, and a list of such ineligible players is kept by the leagues.

The number of players which each club was permitted to employ was limited to twenty-two. It is admitted that this was a reasonable number and that none of the clubs retained more players than needed. The number of skilled players available did not equal the demand, and clubs within the appellant leagues were competing among themselves for first-class players. One of the directors of the appellee admitted that if his club had to compete for public favor with the appellants it undoubtedly would have been driven to the ranks of the latter for many of its players. If the reserve clause did not exist the highly skilful players would be absorbed by the more wealthy clubs, and thus some clubs in the league would so far outstrip others in playing ability that the contests between the superior and inferior clubs would be uninteresting and the public would refuse to patronize them. By means of the reserve clause and provisions of the rules and regulations, said one witness, the clubs in the National and American Leagues are more evenly balanced, the contests between them are made attractive to the patrons of the game, and the success of the clubs more certain. The reserve clause and the publication of the ineligible lists, together with other restrictive provisions, had the effect of deterring players from violating their

contracts, and hence the Federal League and its constituent clubs, on which the appellee was one, were unable to obtain players who had contracts with the appellants; in other words, these things had the intended effect, viz., of preventing players from disregarding their obligations. On these provisions, all having for their purpose the preservation by each club of its necessary quota, and no more, of players—rests the gravamen of appellee's case. It must be obvious that the restrictions thus imposed relate directly to the conservation of the personnel of the clubs, and did not directly affect the movement of the appellee in interstate commerce. Whatever effect, if any, they had was incidental, and therefore did not offend against the statute.

There are many other questions raised by the record but it is not necessary for us to consider them.

The judgment must be, and it is, reversed, at the cost of the appellee, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Monday, December 6th, A. D. 1920.

* * * * * * *

October Term, 1920.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

Appeal from the Supreme Court of the District of Columbia.

This cause come on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby reversed with costs, and that this cause be and the same is hereby remanded to the said Supreme Court for further proceedings not inconsistent with the opinion of this Court.

Per MR. CHIEF JUSTICE SMYTH,
December 6, 1920.

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

To the Honorable the Court of Appeals of the District of Columbia:

The defendant in error (plaintiff below) respectfully makes this application for a rehearing of this case and for a modification of the order of this Honorable Court herein to the extent and for the purposes and for the reasons following:

1. On the 6th day of December, 1920, this Honorable Court filed herein its opinion and order, and, for the reasons set forth in said opinion did, by its said order reverse the judgment of the Supreme Court of the District of Columbia in favor of the plaintiff, at the cost of the appellee and remanded the case for further proceedings not inconsistent with the said opinion. As is more fully stated in said opinion of this Honorable Court, the reason for said reversal was that, in the opinion of this Honorable Court, the evidence was legally insufficient to entitle the plaintiff below to recover and, therefore, a verdict for the defendant should have been directed below. Notwithstanding this view of this Honorable Court as to the legal insufficiency of the evidence, it is necessary, under the practice of this Honorable Court and under the decision of the Supreme Court of the United States in the case of Slocum vs. New York Life Insurance Company, 228 U. S. 364, that the order of reversal award a new trial, unless the defendant in error (plaintiff below) consent to abandon such right to a new trial and consent to the entry in this Honorable Court of a final judgment reversing the judgment below and entering judgment absolute in favor of the defendant.

2. The defendant in error herein (plaintiff below), although unable to concur in the reasoning of this Honorable Court in its said opinion, is satisfied that its case was fully presented by the evidence submitted at the trial below and on the present record; that no additional material evidence could be produced at a new trial, and that the rights of the parties can be fully and fairly adjudicated on the present record; whereas a new trial, followed by successive writs of error, would be burdensome and expensive and would serve no useful purpose whatever in the administration of justice. The defendant in error (plaintiff below) therefore, not waiving its right to a review of the error which it respectfully submits is involved in the decision of this Honorable Court as to the legal sufficiency of the evidence, nevertheless desires to waive its right to a new trial below and to consent to an entry of final judgment

herein, to the end that needless time and expense may be saved, and that from the entry of final judgment herein a writ of error may forthwith be prosecuted to the Supreme Court of the United States, for the purpose of reviewing the substantial questions involved in the decision of this Honorable Court, and of correcting what the defendant in error believes to be manifest error involved in said decision of this Honorable Court.

3. In thus consenting to and requesting the entry of final judgment in this Honorable Court, in lieu of a judgment of reversal carrying with it a right to a new trial, the defendant in error (plaintiff below) asks only that this Court take the action which was taken by the United States Circuit Court of Appeals for the Second Circuit on a similar request under similar circumstances in the case of Thomsen vs. Cayser, 243 U. S. 66. In the case just cited, the Supreme Court of the United States upheld the propriety of such action, and held that such action resulted in a final judgment reviewable on writ of error, and that such consent by the plaintiff below to entry of final judgment was not a waiver of the right of further review in the Supreme Court of the United States, but was sufficient to justify entry of final judgment without a new trial, thus leaving open for review only the substantial questions involved in the reversal by the Circuit Court of Appeals of the judgment of the District Court.

4. This case having already been argued before this Honorable Court, and this Honorable Court having expressed its deliberate opinion on the substantial questions involved, your petitioner deems it useless to ask a general reargument of this case before this Honorable Court. For this reason no extended discussion is here presented of the reasons why your petitioner respectfully considers the judgment of this Honorable Court erroneous. Such reasons are those fully set forth in the briefs heretofore filed herein. Reference is hereby made to said briefs for a statement of the reasons why your petitioner deems the decision of this Honorable Court erroneous. Your petitioner, however, does not ask a general reargument, but only asks a rehearing to the end that the order of this Honorable Court may be modified to the extent and for the purposes herein set forth.

Wherefore, your petitioner, defendant in error (plaintiff below), respectfully prays that a rehearing may be granted in this case and that, on such rehearing, the order of this Honorable Court may be so modified that, instead of a simple order of reversal (carrying with it, of necessity, the right to a new trial), this Court may enter a final judgment, reversing the judgment below and entering judgment absolute for the defendant (plaintiff in error here), or directing entry of such judgment below; and your petitioner hereby expressly consents to the entry of such final judgment and waives all right to a new trial below, but at the same time reserves, and does not waive, the right of review, by writ of error to the Supreme Court of the United States, of the errors (not including such failure to

award a new trial) involved in the judgment of this Honorable Court.

And as in duty bound, your petitioner will ever pray.

WILLIAM L. MARBURY,
CHARLES A. DOUGLAS,
*Counsel for Petitioner.*

We hereby certify that the aforegoing petition for rehearing is, in our opinion, well founded in law, and is not intended for delay.

WILLIAM L. MARBURY,
CHARLES A. DOUGLAS,
*Counsel for Petitioner.*

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

To the Honorable the Court of Appeals of the District of Columbia:

The petition of the defendant in error, (plaintiff below) respectfully shows:

1. That it is herewith filing its petition for a rehearing of this case and for a modification of the order of this Honorable Court, filed herein on the 6th day of December, 1920, to the extent and for the purposes and reasons set forth in said petition;

2. That under Rule 23 of this Honorable Court, such petition will not operate to stay the mandate or other process provided for in Rule 23, except by special order of the Court; and that under Rule 23, such mandate or other process will issue, as of course, after the expiration of fifteen days from the date of the judgment of this Court (December 6, 1920), unless otherwise ordered;

3. That in view of the nature of such petition for rehearing and modification and the end sought to be accomplished thereby no useful purpose would be subserved if the mandate or other process of this Honorable Court should issue before the Court has disposed of such petition but would cause unnecessary complications and delay.

Wherefore, your petitioner prays that the mandate or other process of this Honorable Court be stayed and withheld until this Honorable Court finally acts upon such petition for rehearing and modification.

WILLIAM L. MARBURY,
CHARLES A. DOUGLAS,
*Counsel for Petitioner.*

(Endorsed:) No. 3368. The National League of Professional Baseball Clubs, et al., appellants, vs. The Federal Baseball Club of Baltimore &c. Petition for Rehearing; Petition to stay Mandate. Court of Appeals, District of Columbia, filed Dec. 18, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

Plaintiffs in error (defendants below), without consenting to the granting of the relief prayed for by the defendant in error (plaintiff below) in its petition for a rehearing of this case, and if this Honorable Court should grant a rehearing for the purpose of entering a final judgment in favor of plaintiffs in error in accordance with the prayer of said petition, respectfully suggest to the Court that the record of this case discloses many other defenses for sustaining the judgment of reversal entered by this Court on December 6, 1920 (other than the question of interstate commerce), which, if this Honorable Court should deem meritorious, should be sustained before the entry of such final judgment as prayed for by defendant in error, so that plaintiffs in error may have the full benefit of the decision of this Court in their favor on the other assignments of error should the case go to the Supreme Court of the United States.

Respectfully submitted,

BENJAMIN S. MINOR,
GEORGE WHARTON PEPPER,
*Attorneys for Plaintiffs in Error*

(Endorsed:) The National League of Professional Baseball Clubs, et al., appellants, vs. The Federal Baseball Club of Baltimore &c. Suggestions of Plaintiff in Error. Court of Appeals, District of Columbia, filed Dec. 22, 1920. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

*Memorandum Opinion by Chief Justice Smyth.*

A petition for rehearing and for modification of the judgment of the court has been filed by the appellee. It appears therefrom that the appellee does not desire to present additional testimony, does not wish a new trial, but is willing to stand on the record as made, and that appellee prefers, instead of a ruling granting a new trial, a decision reversing the judgment of the lower court and directing that court to enter judgment for the defendants in order that it may carry the case to the Supreme Court of the United States without further delay. We think the petition should be granted. Thomsen et al. vs. Cayser et al., 190 Fed. 536; 243 U. S. 66.

The judgment, therefore, of this court, entered on December 6, 1920, is hereby vacated and the judgment of the Supreme Court of the District of Columbia is reversed, without a new trial, at the cost of the appellee, and this cause is remanded to the Supreme Court of the District with instructions to enter a judgment for the defendants.

Reversed and Remanded.

Monday, January 3, A. D. 1921.

* * * * * * *

No. 3368.

January Term, 1921.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

On consideration of the petition for a rehearing and modification of the judgment of this Court, It is this day ordered that the judgment entered herein on December 6, 1920, be and the same is hereby vacated, and that the judgment of the Supreme Court of the District of Columbia be, and the same is hereby, reversed, without a new trial at the costs of the appellee, and that this cause be,

and the same is hereby, remanded to the Supreme Court of the District of Columbia with instructions to enter a judgment for the defendants.

Per Mr. Chief Justice SMYTH,
January 3, 1921.

In the Court of Appeals of the District of Columbia.

No. 3368.

The National League of Professional Baseball Clubs, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants.

vs.

The Federal Baseball Club of Baltimore, Inc., Appellee.

*Petition for Writ of Error.*

To the Honorable the Chief Justice and the Associate Justices of the Court of Appeals of the District of Columbia:

The petition of the Federal Baseball Club of Baltimore, Inc., appellee, respectfully shows unto the Court that this cause is now pending in the Court of Appeals of the District of Columbia; that a judgment was rendered therein on the 3rd day of January, 1921, reversing the judgment of the Supreme Court of the District of Columbia in favor of the appellee, the Federal Baseball Club of Baltimore, Inc., heretofore rendered in said cause in favor of the appellee, plaintiff below, for the sum of $240,000, with interest thereon from the 19th day of May, 1919, and costs, and the further sum of $24,000 as attorneys' fee, in accordance with the provisions of Sec. 7 of the Act of July 2, 1890, Chapter 647, known as the Sherman Anti-Trust Act; and that this cause is one in which the construction of a general law of the United States, namely, the said act to protect trade and commerce against unlawful restraints and the monopolies approved July 2, 1890, and commonly known as the Sherman Act, was drawn in question by the appellee; that this cause is one in which the said Court of Appeals of the District of Columbia therefore has not final jurisdiction; that the judgment rendered by this Court in this cause is a final one and this cause is one properly to be reviewed by the Supreme Court of the United States upon the writ of error inasmuch as the petitioner herein considers itself aggrieved by the judgment so rendered by this Court of Appeals of the District of Columbia, whereby the said judgment of the Supreme Court of the District of Columbia was reversed with direction to enter judgment for the appellants (defendants below) with costs to be taxed against the appellee (plaintiff below).

Wherefore your petitioner prays that a writ of error be allowed in this cause directing the Clerk of the Court of Appeals of the District of Columbia to send the records and proceedings in this cause together with all things concerning the same to the Supreme Court

of the United States in order that the errors complained of in the assignment of errors filed herewith and herein by your said petitioner may be reviewed and if error be found corrected according to the laws and customs of the United States; and your petitioner also prays the Court that the penalty of the bond for costs may be fixed by order of this Court.

CHAS. A. DOUGLAS,
WILLIAM L. RAWLS,
WILLIAM L. MARBURY,
*Attorneys for Petitioner.*

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INC., Appellee.

*Assignments of Error.*

1. The Court erred in reversing the judgment of the Supreme Court of the District of Columbia in favor of The Federal Baseball Club of Baltimore, Incorporated, the defendant in error against the plaintiffs in error.

2. The Court erred in ruling that there was no legally sufficient evidence produced at the trial entitling the defendant in error to a judgment against the plaintiffs in error.

3. The Court erred in holding that the business in which the defendant in error and the plaintiffs in error, were engaged, as shown by the record in this case, was not Interstate Commerce within the true construction and meaning of the Anti-Trust Laws of the United States.

4. The Court erred in holding that the transportation and movement from state to state, of the Base Ball players employed by the defendant in error and the plaintiffs in error, and their paraphernalia, in the manner and for the purposes shown by the testimony, was not Interstate Commerce, but only an incident to the production of the game of Base Ball and that the production of the game was the dominant feature of said business.

5. The Court erred in holding that there was no legally sufficient evidence produced at the trial below to show that the plaintiffs in error, had combined or conspired to restrain trade or commerce among the several states or to show that the said plaintiffs in error had monopolized or attempted to monopolized or combined with

others to monopolize trade or commerce among the several States or part thereof.

6. The Court erred in holding that the plaintiffs in error had no monopolized or combined with others to monopolize the business o giving exhibitions of professional baseball and in holding that "th number of players which each club was permitted to employ wa limited to twenty-two. It is admitted that this was a reasonabl number and that none of the clubs retained more players than i needed."

7. The Court erred in holding that the plaintiffs in error had no combined or conspired to restrain trade or commerce among th several States or a part thereof.

8. The Court erred in holding that the plaintiffs in error ha not monopolized or attempted to monopolize or combined wit others to monopolize trade or commerce among the several States o a part thereof.

9. The Court erred in not affirming the judgment of the Supren Court of the District of Columbia rendered in favor of the defenda in error.

(Endorsed:) No. 3368. The National League of Profession Baseball Clubs, et al., appellants, vs. The Federal Baseball Clu Court of Appeals, District of Columbia, filed Jan. 8, 1921. Henr W. Hodges, Clerk. Petition for Writ of Error, and Assignmen of Error.

Monday, January 10th, A. D. 1921.

* * * * * * *

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUB National Exhibition Company, The Brooklyn Ball Club, et a Appellants.

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

On consideration of the petition for the allowance of a writ error to remove the above entitled cause to the Supreme Court of t United States, It is by the Court this day ordered that said w issue as prayed, and the bond for costs is fixed at the sum of thr hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The National League of Professional Baseball Clubs, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants, and The Federal Baseball Club of Baltimore, Incorporated, a manifest error hath happened, to the great damage of the said The Federal Baseball Club of Baltimore, Incorporated, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 13th day of January, in the year of our Lord one thousand nine hundred and twenty-one.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Allowed by

——— ———.

(*Bond on Writ of Error.*)

Know all Men by these Presents, That we, The Federal Baseball Club of Baltimore, Inc., a corporation organized under the laws of the State of Maryland, as principal, and New Amsterdam Casualty Company, a corporation, as surety, are held and firmly bound unto The National League of Professional Baseball Clubs and others, Appellants in the hereinafter mentioned cause, in the full and just sum of Three hundred dollars ($300) to be paid to the said National League of Professional Baseball Clubs and others, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 11th day of January in the year of our Lord one thousand nine hundred and twenty-one.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between The National League of Professional Baseball Clubs and others, Appellants, vs. Federal Baseball Club of Baltimore, Inc., Appellee, known as No. 3368, October Term, 1920, a judgment was rendered against the said Federal Baseball Club of Baltimore, Inc., and the said Federal Baseball Club of Baltimore, Inc., having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said National League of Professional Baseball Clubs and others, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Federal Baseball Club of Baltimore, Inc., shall prosecute said writ of error to effect, and answer all costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

FEDERAL BASEBALL CLUB OF BALTIMORE, INC., [SEAL.]

By CARROLL W. RASIN, [SEAL.]
*President.*

[Seal of the Federal Baseball Club of Baltimore, Incorporated.]

Attest:
HARRY GOLDMAN,
*Secretary.*

NEW AMSTERDAM CASUALTY CO., [SEAL.]

By THOS. J. DE LASHMUTT, [SEAL.]
*Attorney in Fact.*

GARNER W. DENMEAD, [SEAL.]
*Vice President.*

[Seal of New Amsterdam Casualty Co.]

G. LEE BURGESS,
*Assistant Secretary.*

Approved by—
C. J. SMYTH,
*Chief Justice Court of Appeals of the District of Columbia.*

[Endorsed:] No. 3368. The National League of Professional Base Ball Clubs, et al., appellants, vs. The Federal Baseball Club, of Baltimore. Bond for costs on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jan. 13, 1921. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To the National League of Professional Baseball Clubs, National Exhibition Company, The Brooklyn Ball Club, et al., appellants, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The Federal Baseball Club of Baltimore, Incorporated, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Constantine J. Smyth, Chief Justice of the Court of Appeals of the District of Columbia, this 13th day of January, in the year of our Lord one thousand nine hundred and twenty-one.

CONSTANTINE J. SMYTH,
*Chief Justice of the Court of Appeals of the District of Columbia.*

Service accepted this 13th day of January, 1921.
BENJ. S. MINOR,
GEORGE WHARTON PEPPER,
*Attys. for Appellants.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Jan. 13, 1921. Henry W. Hodges, Clerk.

In the Court of Appeals of the District of Columbia.

No. 3368.

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants,

vs.

THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED.

In the preparation of the transcript of the record on writ of error to the Supreme Court of the United States in the above entitled case, the appellee (plaintiff in error in the Supreme Court of the United States) designated the following papers to constitute the record on writ of error *of* the Supreme Court of the United States:—

1. Transcript of the record.
2. Argument of cause.
3. Opinion of Court.

4. Judgment.
5. Petition for rehearing and stay of mandate.
6. Suggestions of appellants in opposition to petition for rehearing and stay of mandate.
7. Order modifying judgment, etc.
8. Opinion of Court on order modifying judgment.
9. Petition for writ of error and assignments of error.
10. Order allowing writ of error and fixing amount of bond for costs. Writ of error.
11. Bond for costs on writ of error.
12. Citation with acceptance of service.
13. This designation.

CHAS. A. DOUGLAS,
*Attorney for Appellee, Plaintiff in Error in Supreme Court of the United States.*

(Endorsed:) No. 3368. The National League of Professional Baseball Clubs, et al., appellants, vs. The Federal Baseball Club &c. Appellee's designation of record on writ of error to Supreme Court, U. S. Court of Appeals, District of Columbia, filed Jan. 13, 1921. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 529 inclusive constitute a true copy of the transcript of record and proceedings of said Court of Appeals, as designated by counsel, in the case of The National League of Professional Baseball Clubs, National Exhibition Company, The Brooklyn Ball Club, et al., Appellants, vs. The Federal Baseball Club of Baltimore, Incorporated, No. 3368, January Term, 1921, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 15th day of January A. D. 1921.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 28,047. District of Columbia Court of Appeals. Term No. 690. The Federal Baseball Club of Baltimore, Incorporated, plaintiff in error, vs. The National League of Professional Baseball Clubs, National Exhibition Company, The Brooklyn Ball Club, et al. Filed January 18th, 1921. File No. 28,047.

FILED
FEB 27 1922
WM. R. STANSBURY
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1921.

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No. 204.

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THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED,

PLAINTIFF IN ERROR,

*vs.*

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL EXHIBITION COMPANY, THE BROOKLYN BALL CLUB, ET AL.

---

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

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L. EDWIN GOLDMAN,
WILLIAM L. RAWLS,
WILLIAM L. MARBURY,
CHARLES A. DOUGLAS,
*Counsel for Plaintiff in Error.*

# INDEX.


PAGE

THE WRIT OF ERROR ..... 2

Suit under Sherman Act ..... 2

Judgment Supreme Court of the District of Columbia in Favor of Plaintiff in Error (Plaintiff) for $240,000.... 2, 3

Reversed by Court of Appeal of the District ..... 3

Plaintiff in Error Followed Procedure in Thomsen v. Keyser, 243 U. S. 66, to bring case to this Court ..... 3

THE PARTIES

Defendants in Error Dominating Factors in Combination Known as Organized Baseball ..... 4

Plaintiff in Error a Constituent Member of Federal League, Which Was Wrecked and Destroyed by Defendants in Error ..... 4

THE CASE BRIEFLY STATED ..... 4, 12

The Business of Providing Exhibitions of Professional Baseball in Interstate Commerce ..... 12, 15

STATEMENT OF FACTS

THE NATURE OF THE BUSINESS ..... 15

ORGANIZATION OF FEDERAL LEAGUE AND PLAINTIFF IN ERROR .. 19

MONOPOLY OF DEFENDANTS IN ERROR (ORGANIZED BASEBALL) .. 22

The "War" Between Organized Baseball and American League, 1901, 1902 ..... 24

NATIONAL AGREEMENT, ITS PURPOSE AND EFFECT ..... 25

The Parties to the National Agreement, Its All-embracing Character ..... 26

The Right of Reservation One Means of Perpetuation of Monopoly ..... 31

Provisions of National Agreement, Showing Its Purpose 33, 46

Testimony Showing Operation of National Agreement .. 47, 51

SUMMARY OF FACTS ESTABLISHING MONOPOLY ..... 54

PAGE

Effect of Monopoly on Federal League ..... 55

Interferences by Organized Baseball With Plaintiff in Error ..... 57

THE WRECKING OF THE FEDERAL LEAGUE BY ORGANIZED BASEBALL ..... 72

The Tentative Peace Agreement ..... 80

Meeting at Waldorf, December 17, 1915 ..... 87

ASSIGNMENTS OF ERROR ..... 112

THE LAW OF THE CASE ..... 112

PROPOSITIONS ..... 115

I. THE BUSINESS OF PROVIDING EXHIBITIONS OF BASEBALL AS CONDUCTED BY DEFENDANTS IN ERROR AND PLAINTIFF IN ERROR IS INTERSTATE COMMERCE ..... 116

Map Showing Ten of the Thirty-eight Circuits of Organized Baseball ..... 127

Map Showing Federal League Circuit ..... 131

II. THE COMBINATION WHICH DEFENDANTS IN ERROR HAVE ENTERED INTO IS A MONOPOLY OR AN ATTEMPT TO MONOPOLIZE, AND A CONSPIRACY IN RESTRAINT OF INTERSTATE COMMERCE WITHIN THE MEANING OF THE SHERMAN ACT. 157

III. PLAINTIFF IN ERROR HAS DONE NOTHING TO WAIVE OR IN ANY DEGREE PREJUDICE ITS RIGHT TO RECOVER IN THIS CASE ..... 175

No Election by Plaintiff in Error to Confirm Peace Agreement ..... 190

IV. THE INSTRUCTIONS OF THE TRIAL COURT TO THE JURY UPON THE QUESTION OF DAMAGES WERE CORRECT ..... 192

V. NO ERROR IN ANY OF THE RULINGS OF THE TRIAL COURT UPON THE ADMISSIBILITY OF EVIDENCE OR IN ITS INSTRUCTIONS TO THE JURY ..... 201

CONCLUSION ..... 201

# TABLE OF CASES.


| | PAGE |
|---|---|
| Champion vs. Ames, 188 U. S. 321 | 146 |
| De La Vergne Co. vs. German Sav. Inst., 175 U. S. 40 | 180 |
| Eastern States Lumber Co. vs. United States, 234 U. S. 600 | 173 |
| Gibbons vs. Ogden, 9 Wheaton 189 | 140 |
| Hoke vs. United States, 227 U. S. 308 | 132 |
| Marchetti vs. United Booking Offices, 227 Fed. 165 | 146 |
| Motion Picture Patents vs. Universal Film Mfg. Co., 235 Fed. 401 | 151 |
| Nash vs. United States, 229 U. S. 373 | 174 |
| Pennsylvania Gas Co. vs. Public Service Com., 252 U. S. | 23 |
| Pensacola Tel. Co. vs. West. Union Tel. Co., 96 U. S. 1 | 146 |
| Pegg vs. International Text Book Co., 217 U. S. 91 | 136, 141 |
| Sedgewick on Damages, p. 250 | 193 |
| Slocum vs. N. Y. Life Ins. Co., 228 U. S. 364 | 3 |
| Standard Oil Co. vs. United States, 221 U. S. 1 | 174 |
| Standard San. Mfg. Co. vs. United States, 226 U. S. 174 | 174 |
| Swift & Co. vs. United States, 196 U. S. 375 | 144 |
| Thomsen vs. Keyser, 243 U. S. 66 | 3, 173, 175, 200 |
| United States vs. American Tobacco Co., 221 U. S. 106 | 143, 157, 161 |
| United States vs. Patten, 226 U. S. 525 | 146 |
| United States vs. Union Pacific Ry. Co., 226 U. S. 61 | 174 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1921. No. 204.

*The Federal Baseball Club of Baltimore, Incorporated,*
Plaintiff in Error,

v.

*The National League of Professional Baseball Clubs, National Exhibition Company, the Brooklyn Ball Club, the Philadelphia National League Club, Successor of the Philadelphia Ball Company; the Boston National League Baseball Company, Chicago National League Ball Club, Successor of the Chicago League Ball Club; St. Louis National Baseball Club, Successor of the American Baseball and Athletic Exhibition Company of St. Louis, Missouri; the Pittsburgh Athletic Company, the Cincinnati Baseball Club, Formerly the Cincinnati Exhibition Company; the American League of Professional Baseball Clubs, American League Baseball Club of New York, Successor of the Greater New York Baseball Association; the Boston American League Baseball Club, American Baseball Club of Philadelphia, the Washington American League Baseball Club, American League Baseball Club of Chicago, the St. Louis American League Baseball Company, the Detroit Baseball Company, the Cleveland Baseball Company, Successor of the Cleveland Ball Club Company; August Herrmann, Bancroft B. Johnson and John K. Tener,*

Defendants in Error.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

## THE WRIT OF ERROR.

The writ of error in this case brings up for revie
final judgment of the Court of Appeals of the Di
of Columbia reversing a judgment of the Supreme
of the District in favor of plaintiff in error (who
the plaintiff in the suit) for the sum of $264,000.

Plaintiff in error brought suit under the She
Anti-Trust Act to recover damages against defen
in error for injury caused to plaintiff in error: firs
damage to its business as a result of the monopo
the business of providing exhibitions of profes
baseball which defendants in error had estab
and maintained throughout the United States, and
spiracy on their part to restrain interstate comme
said business; and, second, for injury sustained by
tiff in error as a result of a conspiracy on the part
defendants in error to wreck and destroy, *and the*
*wrecking and destruction* of the Federal Leagu
which plaintiff in error was a constituent membe
the existence of which League was essential to the
ing on of the business of plaintiff in error; this co
acy being one to monopolize a part of interstate
merce and in restraint thereof.

The jury rendered a verdict of $80,000 in fa
plaintiff in error, which under the statute, was t
and, together with a counsel fee of $24,000, allo
counsel for plaintiff in error in accordance wi
Sherman Act, constitutes the judgment which w
versed by the Court of Appeals of the District
reinstate which this writ of error is prosecuted.

The case went to the Court of Appeals of the D
upon appeal taken by the defendants in error.
assignments of error in that Court appear on p

of the Record. The Court of Appeals in its opinion reversing the judgment, as we understand it, dealt exclusively with the question of whether or not the business involved in this case in which the parties were engaged was interstate commerce. It reached the conclusion that it was not (Record, pp. 504 to 510). Following the decision of this Court in *Slocum* v. *N. Y. Life Ins. Co.*, 228 U. S. 364, the Court of Appeals reversed the judgment of the Supreme Court of the District, and remanded the case for further proceedings not inconsistent with its opinion (Rec., p. 510). Plaintiff in error believing that as the question upon which the Court of Appeals reversed the judgment in its favor was fundamental, and that its case was fully presented by the evidence submitted at the trial and on the record then made up, followed exactly the practice approved by this Court in the case of *Thomsen* v. *Keyser*, 243 U. S. 66, and waived its right to a new trial, reserving at the same time its right to a review of the error which it contended was involved in the decision of the Court of Appeals. Final judgment was then entered by the Court of Appeals (Record, pp. 511 to 515). Having examined carefully the record in the case of *Thomsen* v. *Keyser*, supra, in this Court, plaintiff in error followed precisely the form of the petition filed in that case for the same purpose and the practice which this Court there approved. "The plaintiffs did not consent to a judgment against them, but only that, if there was to be such a judgment, it should be final in form instead of interlocutory, so that they might come to this Court without further delay." *Thomsen* v. *Keyser*, 243 U. S. at page 83.

## The Parties To The Suit.

The defendants in error were defendants in the suit in the Supreme Court of the District of Columbia. They are the dominating and controlling forces in the com-

bination popularly described as ORGANIZED BASEBALL. They are: The NATIONAL LEAGUE, together with its eight constituent clubs, each club being a separate corporation, and the AMERICAN LEAGUE, also with its eight constituent clubs, each likewise being a separate corporation. These two leagues are known as the MAJOR LEAGUES. AUGUST HERRMANN, BANCROFT B. JOHNSON and JOHN K. TENER, constituting the NATIONAL COMMISSION, the supreme executive, legislative and judicial body of ORGANIZED BASEBALL.

The plaintiff in error is a corporation, created under the laws of Maryland, formed for the purpose of maintaining one of the constituent clubs in a new organization known as the FEDERAL LEAGUE, intended to operate independently of ORGANIZED BASEBALL. It was the destruction of the FEDERAL LEAGUE by the defendants in error and the consequent destruction of the business of plaintiff in error which gave rise to the cause of action in this case.

Defendants in error are hereafter generally referred to as ORGANIZED BASEBALL.

## THE CASE BRIEFLY STATED.

The record in the case is somewhat voluminous, embracing the testimony produced at a trial which extended over a period of three weeks. For this reason it may aid in a more ready apprehension of the facts and issues involved to make a brief statement of the essential features of the case, before giving a detailed review of the testimony.

The plaintiff in error, a corporation, was formed in 1913, in response to a widespread popular movement in Baltimore City and its vicinity for the purpose of becoming a constituent member of the FEDERAL LEAGUE, a

new and independent organization designed to establish a professional baseball circuit or league, having a club in Baltimore and in seven other cities. Prior to and at this time the entire business of furnishing exhibitions of professional baseball throughout the whole United States had been under the absolute and complete domination of the defendants in error who constitute what is popularly known as ORGANIZED BASEBALL. Every club in every city and town in the United States having a team employing professional players (those who play regularly for compensation) so far as this business was concerned had for many years been subjected to the authority and control of ORGANIZED BASEBALL, and such was the complete supremacy of this organization that it rested entirely with it to say whether a particular town or city should be included in or excluded from its various leagues and circuits, and what type of baseball any city or town should have. This complete domination of the business of providing exhibitions of baseball contests had been achieved by ORGANIZED BASEBALL as a result of a series of steps, agreements and various other operations and devices, extending over a number of years, the clearly contemplated intention, purpose and design of which were to bring the entire business of providing exhibitions of professional baseball within its grasp and control, to monopolize that business and to suppress completely and absolutely all competition, and all possibility of competition therein. The methods, plans and conduct through which this monopoly was obtained and perpetuated will be stated in detail in due time, but it is sufficient here in this brief introductory statement of the gravamen of this action, to illustrate the nature and purpose of the plan of the defendants, and the means which they employed to accomplish it, as well as the complete success which they achieved, to state that *every organization engaged in the business of providing professional baseball in the United States* and *every baseball player in the entire United States, with no appreciable or substantial exceptions, was, through a*

*comprehensive and ingenious system of so-called contracts, rules and regulations, and an oppressive, intimidating and coercive course of treatment, subjected to the most complete and despotic control of* ORGANIZED BASEBALL.

The City of Baltimore, although a city of 700,000 inhabitants, had been arbitrarily excluded by ORGANIZED BASEBALL from what is known as Major League Baseball; that is, contests between teams of the first rank, notwithstanding that down to 1902 it had been one of the leading Major League cities in the country. Exhibitions had been given since 1903 by clubs of minor league classification, constituting part of the system of ORGANIZED BASEBALL, Baltimore being arbitrarily ranked by ORGANIZED BASEBALL for the purposes of baseball exhibitions in the class with cities far smaller in population and commercial importance.

The citizens of Baltimore had long believed that this was a humiliation which the city ought not to bear and one which tended to lessen its standing and prestige. Accordingly, when a movement was started, about 1913, to establish an independent league of major classification, one entirely free from all connection with or control by ORGANIZED BASEBALL, many of her citizens eagerly embraced the opportunity to have Baltimore join it, in order to provide a club and baseball contests which would satisfy the widespread popular demand in the city for the highest character of exhibitions.

This league, known as the FEDERAL LEAGUE, was duly organized, having a circuit of eight clubs in the following cities: Brooklyn, Buffalo, Pittsburgh, Baltimore, Chicago, St. Louis, Kansas City and Indianapolis.

Six hundred individuals subscribed in small amounts to the stock of the Baltimore Club, so that one hundred

and sixty thousand dollars in cash was raised immediately for the enterprise.

The necessary funds thus being provided in Baltimore, and likewise in the other cities of the league, and grounds and other physical equipment being obtained, the league began operations, or, at any rate, attempted operation as a Major League in 1914. One of the great difficulties confronting the new league, or rather its various clubs, was the obtaining of players so as to provide teams to begin the schedule of contests between the clubs in the league; the business in its very nature being capable of being conducted only in a league or circuit; that is, by employing regularly contesting teams, who play according to a previously arranged and definite schedule. This difficulty arose from no lack of competent players in the country, because the testimony conclusively shows that there were among the eight or ten thousand professional players throughout the country an ample number of sufficient skill to supply a new major league, which would only require one hundred and fifty or two hundred men, but entirely from the fact that under the system which ORGANIZED BASEBALL had established and maintained, practically every player in the United States was in one way or another, as before stated, under the control of ORGANIZED BASEBALL, and through its various schemes and devices, not alone by oppressive and illegal contracts, but through threats, intimidation and other means, deprived of all freedom of will and all choice of employment. Not one of these players could accept employment with the FEDERAL LEAGUE except at the risk of being thereafter excluded from every other baseball organization in the United States. This subjection of all these thousands of players by means of an elaborate system of restrictions upon their liberty of action, which was nothing more *than a system of peonage*, was clearly shown to be, notwith-

standing the pretences under which its real object was sought to be disguised, for the purpose of rendering it impossible for any independent organization to enter the business of providing games of professional baseball in competition with ORGANIZED BASEBALL.

Notwithstanding these difficulties, however, which will be given in detail later, the various clubs of the league obtained such players as were available, and began business in the spring of 1914.

The announcement of the plan to establish this new and independent league—this attempt to enter the realm which ORGANIZED BASEBALL had pre-empted and regarded as its exclusive property—evoked the most violent resentment of ORGANIZED BASEBALL, and it was loudly and broadly *proclaimed by its responsible officers, in authoritative interviews and pronouncements in the press, and through other channels, that it intended to crush the new organization.* These threats it then proceeded to carry out. It did everything in its power to destroy the confidence of the public in the new league. Its various leagues and clubs, having been theretofore the sole employers of all the players in the United States, it threatened any player who had ever been connected with ORGANIZED BASEBALL with perpetual blacklist, and exclusion from every one of the hundreds of clubs under its control if he should accept employment from any club in the FEDERAL LEAGUE. These threats were made *and acted upon by* ORGANIZED BASEBALL throughout the existence of the FEDERAL LEAGUE.

This deliberate assault upon the life of the new organization continued for two years; that is, during 1914 and 1915; but the new league survived and was doing business in December, 1915, and was preparing for business for the coming playing season of 1916. It had weathered

the storm for this period, and that it had obtained a substantial measure of success is best evidenced by what was done by ORGANIZED BASEBALL to finally get rid of its competition, which will be recited in a moment.

The Baltimore Club (plaintiff in error), down to December, 1915, was being enthusiastically supported by its officers and stockholders, and, considering the handicaps to which the monopoly of ORGANIZED BASEBALL had subjected it, and the war which it had waged against the new organization, the public of Baltimore had satisfactorily supported the enterprise.

The injury to the business of plaintiff in error, which was suffered as a direct result of the monopoly which ORGANIZED BASEBALL had established and was maintaining during the period when the FEDERAL LEAGUE was organized and operated as a new and independent concern, was large. But it suffered damage not alone as a result of the existing monopoly, but also during the period in question, from the illegal, oppressive and coercive acts and conduct of ORGANIZED BASEBALL, intended to cripple and injure the business of plaintiff in error and the league of which it was a member, and to render it impossible for that business to be carried on.

ORGANIZED BASEBALL did not succeed, however, in its purpose to exterminate the FEDERAL LEAGUE and its separate members by these methods. In December, 1915, the League was still, as above stated, a going concern. *More desperate means were then adopted by* ORGANIZED BASEBALL *to eliminate this competition from the field.*

Through transactions which amount to nothing less than bribery, certain representatives of ORGANIZED BASEBALL, acting for that organization, and whose acts were afterwards duly ratified and given effect by it,

succeeded in inducing certain of the persons interested in several of the individual clubs of the FEDERAL LEAGUE (whose continued operation was necessary to the existence of the other clubs in that League, and who were under solemn contractual obligation to continue in business with each other) to betray and desert the other clubs therein, to sell and assign their grounds, to turn over their players to ORGANIZED BASEBALL, and, in this way, to wreck entirely the FEDERAL LEAGUE. *The Baltimore Club was amazed to hear in December,* 1915, *that the League of which it was a member, and intended to remain a member, and which it was then supporting with all necessary resources, had been sold out and betrayed by those whose co-operation was essential to its existence, to* ORGANIZED BASEBALL. *The consideration for the perfidy of the persons above mentioned was a total of* $750,000.

*No officer, stockholder, or any one connected with plaintiff in error ever had the slightest part in this transaction, much less was any one authorized to represent, speak or act for it therein. It has never received one dollar for the great losses which the acts of* ORGANIZED BASEBALL *have caused it to sustain.*

All the facts above stated were shown beyond controversy at the trial of this case before a jury in the Supreme Court of the District of Columbia, sitting in the City of Washington. Most of these facts were undisputed by defendants in error.

Although the jury was drawn from the residents of a city long connected with this great national game through the Washington Club of the American League, one of the defendants in this case, and a city where the *sport* of baseball is very popular, and where necessarily there would be great reluctance to do anything which it might be supposed would injuriously affect it, still that

jury felt bound under their oaths and under the compulsion of the facts in this case to condemn the outrageous methods which the defendants had employed and which had resulted *in the complete destruction* of plaintiff's business by awarding it a sum which when trebled made up the amount of its actual losses flowing directly from these unlawful practices.

When, as before recited, defendants in error after two years of continued assault upon the FEDERAL LEAGUE found that they had not succeeded in exterminating it, they invaded that league and bought off the leading individual backers of five of the clubs in its circuit. They knew that with these clubs out of the way, the other three clubs in the League, one of which was plaintiff in error, would be destroyed, and the FEDERAL LEAGUE wrecked. Plaintiff in error was thus left with no other clubs to play with. Its physical equipment, representing an investment of nearly $100,000, was rendered practically valueless. It was left with large obligations to players for salaries under unexpired contracts. Its actual losses in money, proved beyond the shadow of controversy, as the direct and immediate consequence *of this absolute wiping out of its business* by the defendants in error, amounted to $240,000.

In the statement of facts which is hereafter given in this brief, we set forth fully all the details of the transactions, as shown by the record in this case, which have been briefly summarized above. Speaking with a full sense of responsibility, we believe that no case which has come before this Court involving the Sherman Anti-Trust Act, has presented such an example of ruthless conduct toward a competitor, or of shameless disregard of his fundamental property rights as that of which the undisputed evidence in this record shows the defendants in error to have been guilty, in carrying out their criminal conspiracy to exterminate the plaintiff in error.

THE BUSINESS OF PROVIDING EXHIBITIONS OF PROFESSIONAL BASEBALL IS INTERSTATE COMMERCE.

It is essential in approaching the consideration of this question to distinguish between *the business* of providing exhibition of baseball by the purely commercial organizations who carry on that business by transporting players in their employ over the various States of the Union for the purpose of making a profit thereby, and *the sport* of baseball. The defendants in error here are not baseball players, they are business corporations who employ professional baseball players for the exclusive purpose of making money. Their business is one of collosal proportions, representing the investment of many millions of dollars, and the profits from which have been enormous. Defendants in error have to do solely with the money-making aspects of baseball. They employ players, transport them around the country from one State to another in order that they may derive revenue by so doing.

Speaking with reference alone to the interstate commerce feature, the business of the plaintiff in error was of a similar character. The FEDERAL LEAGUE of which it was a constituent organization, was formed for the purpose of enabling the business organizations in the eight cities of the league to carry on the business of transporting professional baseball players to these cities for the purpose of giving baseball exhibitions for profit. As will be seen later, when ORGANIZED BASEBALL bought out five of the clubs in the FEDERAL LEAGUE and dismantled their plants, thus destroying the League, the business of plaintiff in error could no longer be carried on because the intercourse between it and these organizations in the seven other cities (the league embracing seven states), which had theretofore existed by the sending of its team to those other cities and the coming of the teams of these

cities to its own grounds for the purpose of giving exhibitions, was rendered impossible.

Inherently and essentially, the business of providing exhibitions of professional baseball is intersectional, intercity and interstate. Without a *league* embracing a given number of cities having each an organization employing a team, and providing the necessary grounds and equipment, games cannot be played. Constancy and uniformity of games between contesting teams provided by these organizations in the league is the foundation of the business. The league must embrace different cities in order to make the business a success, because to the contest between the players themselves must be added the element of intercity and intersectional rivalry. This is true as to all the leagues of every class. In the leagues of higher class, of which some of the defendants in error belonged, the element of intercity, interstate and intersectional rivalry is, of course, a more pronounced and dominant characteristic of the business, although, as stated, it pervades every part of it. The leagues rise in importance as the size of the cities in them increase, and as the territory which they represent in the contest broadens. Thus the two great leagues of ORGANIZED BASEBALL, the National and the American, classified as the *Major Leagues*, each has eight competing clubs, in as many different cities, all of them being among the largest cities east of the Rocky Mountains. For instance, the American League consists of Boston, New York, Philadelphia, Washington, Cleveland, Detroit, Chicago and St. Louis.

Not only is there rivalry between the teams representing these large cities, *all in different States* (Washington excepted), BUT IT WILL BE OBSERVED FURTHER THAT FOUR OF THEM ARE EASTERN AND FOUR OF THEM WESTERN CITIES. It is the widespread interest which is excited by

these important contests between these teams representing large cities in the two great geographical sections of the country, the publicity which this representation assures to them, which has given the two so-called major leagues their pre-eminent standing in the world of baseball.

As the size of the cities and the scope of the territory over which they are spread is reduced, the standing of the league is lessened, but in all of them it is the city, state and sectional representation which is the sustaining element from the business standpoint. *It will thus be seen that the entire foundation, the primary idea, the vitalizing element in this business of furnishing exhibitions of professional baseball is interstate travel, communication, intercourse and commerce.* If the transfer between one State and another of teams, as playing units, carrying with them as they travel to their destination their character as the representative contestants of the city, state and section from which they come, were prevented or prohibited, the vast investment in the game, representing millions of dollars, would be wiped out, the business of providing exhibitions of professional baseball as it exists today would be annihilated, and the great current of interstate commerce created by the transportation of the teams and their equipment, the spectators to and from games, the sending of telegraphic information about the games, and interstate intercourse of various forms, would be destroyed. Not only is interstate commerce an element in the business of providing exhibitions of professional baseball, *but it is the very essence and foundation of it.* At the time when the FEDERAL LEAGUE entered the field, no city sent its team into another State or to another city or section of the country except by the consent and under the direction of ORGANIZED BASEBALL. No player traveled on a railroad as a player of professional baseball, no contests were

given anywhere without the leave and license of ORGANIZED BASEBALL. That great stream of commerce between the States created by the transportation of the players, the umpires, the equipment of the teams, the thousands and hundreds of thousands of persons to and from the games, the transmission of telegraphic and postal and newspaper intelligence of the games, all over the country, was subject to the absolute control, dictation, authority and government of this organization known as ORGANIZED BASEBALL.

When, at the proper time, we state fully the facts regarding this legal aspect of the case, it is believed that it will be demonstrated that this business, as it is involved in this case, is clearly interstate commerce, within the meaning of the Sherman Act.

Thus much for a preliminary view of the case. We now proceed to a full statement of the facts as disclosed by the record.

## STATEMENT OF THE FACTS OF THE CASE.

### THE NATURE OF THE BUSINESS.

The business of providing exhibitions of professional baseball has existed in an organized form since the year 1876. It is important in the beginning, we repeat, to distinguish baseball as a sport and baseball as a business or industry. Throughout the country baseball is the most popular of all sport among those seeking a healthful form of outdoor exercise, but baseball as commonly played by the American boy upon the lots and in the parks of the cities and towns, that is, in the amateur form, must be distinguished from the colossal business and industry which has evolved around baseball played in its professional or specialized form. It is baseball in

the latter aspect with which we are concerned in this case.

The great distinguishing feature of professional baseball is that it is of that character which enables those who provide baseball contests or exhibitions to exact payment from those who witness the games, which enables those business enterprises employing the players to pay their operating expenses, and to make their profits (Record, p. 117).

In order to sustain a business of this character a certain peculiar form of organization is necessary, to make it a commercial success. No organization maintaining a single team without any relationship with other teams which would insure a regular schedule of contests would find it possible to carry on the business for profit. No matter where located, whether in a large city or a small town, or how skillful the players, public interest and patronage could not be sustained by witnessing a single team play with haphazard and casual opponents. The element of contest between clubs of equal or nearly equal skill, over a definite time, and according to a prearranged schedule of games, is indispensable to the successful conduct of the contests, as a business enterprise.

The organization which has been universally adopted by those who carry on baseball exhibitions for profit is a league of clubs. Usually, this league consists of six or eight clubs, in various towns or cities. There existed in the United States, in 1913, at about which time the FEDERAL LEAGUE was organized, some thirty-eight leagues engaged in providing baseball exhibitions as a business, all of which were under the control of ORGANIZED BASEBALL. In each of these leagues, the constituent clubs, are located in different cities, and in practically all of the leagues, the cities embraced therein are located in two or more States (Record, page 46). The contests are

limited (with the exception of what is known as the World's Series, to be explained later), to the six or eight clubs, members in the particular league. Each club in each league plays a definite number of games with each of the clubs, members of the league, according to a prearranged schedule. Besides the daily contests between the clubs, playing according to this schedule, there enters into each game the added interest of the contest for the championship, or pennant, as it is called, of the league, which is awarded to the club, who, throughout the entire playing season, wins the highest percentage of games. The playing season extends from April until October. A baseball team is composed of nine men, but it is necessary for all professional teams to have a number of extra players, which increases the number usually employed to as many as twenty-five.

In order to provide for the character of baseball such as that played in these leagues, it is necessary to obtain a satisfactory ball ground, and to equip the same with stands and seats, for the accommodation of the public who pay admission to the games. Each club, therefore, has, in its home city, a ground of this sort, and, for this reason, there is organized in each city of the league a corporation, for the purpose of providing the capital necessary for the enterprise.

These leagues vary in importance, according to the size of the cities embraced within them; the larger cities, of course, furnishing the greater attendance, and being more profitable to those who are engaged in the business, and, consequently, enabling, as well as requiring, them to furnish more skillful players. The leagues are divided into major and minor; the major leagues being those which embrace the largest cities, the minor leagues those which embrace smaller cities. In Organized Baseball, however, this classification is entirely within its arbitrary control.

**Each league constitutes in itself a separate and complete playing unit, and there is no necessity for any relationship at all between the various leagues of the country. There is nothing in the nature of the business which requires that all the leagues of the country, or any number of them, shall be associated together for any purpose.**

Prior to 1883 there was no relationship between these various leagues. In that year, those commercially interested in the National League, which, as above stated, was at that time the only major league, as a result of certain attempts at competition with it as a major league, sought to bring about an association among all the leagues in the country, which would place the control of professional baseball exhibitions in the hands of those who then dominated the National League, and this plan of controlling professional baseball *as a business enterprise*, and unifying all the leagues, in order to insure the continuity of this control among those seeking such control for their own profit, was attempted with more or less success, and led to national agreements of one form or another down to the year 1901.

As long as the various leagues carry on their operations as distinct units, the opportunity for competition will remain open, but if *all the leagues in the country* are brought into one combination whereby each (representing its constituent clubs) agrees not to invade the territory of the others, or have at any time any dealing of any kind with any organization outside the combination, and further, if they all agree to use in employing players a uniform contract forbidding their ever accepting employment from any new organization which may come into existence and giving to their respective employers perpetual control over their services, then it is obvious that all competition will be effectually foreclosed and a monopoly over the business established. It was a com-

bination of exactly this character that ORGANIZED BASEBALL had maintained from 1903 down to the time when the FEDERAL LEAGUE was organized, and throughout its existence.

### ORGANIZATION OF THE FEDERAL LEAGUE AND OF THE CLUB OF PLAINTIFF IN ERROR AS A CONSTITUENT MEMBER THEREOF.

The City of Baltimore had, down to the year 1899, been included in the circuit of the National League, of which league it was one of the leading baseball cities for a number of years, and in 1901 and 1902 its club was a constituent member of the American League. In 1900 Baltimore had no major league team. These leagues, that is, the National and the American, were the two major leagues of the country (Record, pp. 83, 84 and 216).

After the American League team was taken from Baltimore in 1902, Baltimore did not have major league baseball. There were several other cities of sufficient size and importance to demand baseball of major league calibre, but none of these had, down to the organization of the FEDERAL LEAGUE as a major league, been given baseball of that character by those in control of ORGANIZED BASEBALL. It was with a view of providing a league which would include a number of these cities in a major league, and answer the popular demand for the highest class of baseball therein, that THE FEDERAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS was organized. This league was incorporated under the laws of Indiana in March, 1913, and its articles of association are set out in the Record (p. 78). The corporate purposes and plan of doing business is stated in the following paragraph of those articles:

> "The proposed plan of doing business is as follows:

"It is proposed to organize or cause to be organized in certain cities of the United States of America, which shall be determined and designated by the Board of Managers of this Association, baseball clubs and teams, not to exceed eight (8) in number, to represent such respective city in the playing and contesting of baseball games among themselves for supremacy and championship; to form such clubs into what is commonly called a league; to issue to each club or person composing said league a franchise or license upon such terms and conditions as may be prescribed by the by-laws of this Association, or fixed by the rules and regulations thereof, authorizing such respective clubs, franchise owners or licensees to operate and conduct competitive baseball games among themselves for the championship of the league, as per a schedule of games to be adopted by this Association, in parks, grounds or other places in said respective cities, owned, leased, or otherwise controlled by this Association; said games to be played and conducted under the direction, management and control of this Association; and to offer and give such reward or prize to the winner of the greatest percentage of games so played during each season, as shall be determined by the Board of Managers of this Association; and to receive and collect from each club in said league a uniform percentage of the receipts of each club, which percentage shall be fixed and determined by the Board of Managers of this Association."

This corporation, which is herein, for brevity, called the FEDERAL LEAGUE, operated, upon a small scale, in 1913, but in the winter of 1913-1914, through the efforts of one JAMES A. GILMORE, a defendant in this case, broadened the scope of its efforts, and in the year 1914 undertook to provide upon its circuit baseball of the highest grade, in competition with the two then existing major leagues, the American and the National, which, as before stated, were under the control of ORGANIZED BASEBALL.

The circuit of the FEDERAL LEAGUE, as thus reorganized, embraced eight clubs in the following cities: Brooklyn, Pittsburgh, Buffalo, Baltimore, Chicago, St. Louis, Kansas City and Indianapolis.

A separate corporation was organized in each of these cities for the purpose of becoming a constituent member of the FEDERAL LEAGUE.

Having been excluded from major league baseball since 1902, the citizens of Baltimore were anxious that it should have an opportunity to resume its place as one of the leading baseball cities in the country. The testimony in the Record is overwhelming that the size of the city, the widespread popular interest in the sport, and the financial backing which any effort to present major league baseball in Baltimore would receive, were amply sufficient to justify any effort to provide exhibitions of baseball of a major league character in that city. Some of the most prominent and financially responsible citizens of the city have so testified in this case. Witnesses representing every branch of the business and professional life of Baltimore were produced and gave most convincing testimony to this effect. See testimony of:

Robert Garrett (Record, pp. 199 and 200),
Philip L. Poe (Record, pp. 208 and 209),
Edward Hanlon (Record, pp. 216 to 218),
Leonard H. Weil (Record, p. 209),
Col. Stuart S. Janney (Record, pp. 301, 304 and 330),
Carroll W. Rasin (Record, p. 200).

On the 27th of October, 1913, the plaintiff in error was incorporated under the title of THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED. Its certificate of incorporation is set out in the Record (p. 75), and its purposes are stated to be:

> "to operate and maintain a team or teams of professional baseball players in Baltimore or elsewhere, and to purchase, acquire, lease or sell and manage baseball grounds, grand stands, etc."

Upon its organization, the corporation was financed by the issuance of common and preferred stock, which was popularly subscribed—

> "The stockholders numbered approximately six hundred, who were citizens of Baltimore and the different counties of the State, in all walks of life, including wealthy bankers, and quite a number of poor men, who were modest contributors" (testimony of Goldman, Record, p. 77).

About $164,000 in cash was obtained through these subscriptions (Record, p. 77). A lease upon a proper ball ground, located in the same section of the city where baseball had been played by the American and National Leagues was obtained. This was first graded, and then equipped with stands, chairs and other chattel equipment at a total cost of $82,649.46 (Record, pp. 118 and 119).

Had the business of baseball been free from the grip which Organized Baseball had obtained upon it, the testimony in this Record leaves no doubt that The Federal Baseball Club of Baltimore, and the Federal League, would have been a success. It now becomes our duty to describe in detail to the Court the conditions which prevailed in the baseball business at the time the plaintiff in error, and the Federal League, began business as a major league enterprise in the winter of 1913-1914.

### Monopoly of Defendants in Error Over the Business of Professional Baseball.

We have given a brief description of the business of providing exhibitions of professional baseball contests

as that business existed down to 1901. Prefatory to the explanation of the execution and operation of the NATIONAL AGREEMENT of 1903, a short account of what is known as the war between the American and National Leagues, which immediately preceded the making of that Agreement, should be given.

### *The "War" Between Organized Baseball and the American League.*

Down to 1901 the National League was the only league in the country known as a major league; that is, one whose constituent clubs undertook to provide baseball of the highest type of skill. In the winter of 1900 and 1901 an organization known as the old Western League undertook to enter into competition with the National League as a second major organization. There ensued a bitter war with the National League, or more accurately what was then known as ORGANIZED BASEBALL, consisting of the National League and the minor leagues then allied with it, which was carried over a period of about two years. It was a fierce contest, in which each of the parties undertook to bring the other to terms.

The old Western Association, after its entrance into the major league field known as the American League, expanded its circuit by adding to the larger cities of its pre-existing circuit several other of the larger cities of the country, some of which were also embraced in the circuit of the then National League, and several of which had been dropped from the National League circuit a year or so before, when that circuit was reduced from twelve to eight clubs (Record, pp. 83, 84, 394, 395).

### *Competition Eliminated by* NATIONAL AGREEMENT.

It is unnecessary to go into the details of the rivalry between these two organizations. It is sufficient to say

that the National League and ORGANIZED BASEBALL felt keenly the competition which the establishing of the American League created. The new league was a challenge to its supremacy in the baseball business, and in order to eliminate this competition, and to perpetuate the control which ORGANIZED BASEBALL had already in a very large measure theretofore established over the entire field of this business in the United States, an agreement was reached during the spring of 1903 which terminated all competitive warfare between them.

After this competition had been eliminated by this arrangement, plans then began to be considered directed toward the object of thereafter preventing the recurrence of any such competition as that which had been experienced during the years 1901 and 1902. *These plans finally matured into the* NATIONAL AGREEMENT *signed on September* 11, 1903.

This instrument, and the practical operation under it by all the parties thereto, constitute the means through which the organization heretofore described as ORGANIZED BASEBALL, established and maintained down to the organziation of the FEDERAL LEAGUE, the most complete and undisputed control over the business of providing exhibitions of professional baseball throughout the United States.

It therefore becomes necessary to examine the National Agreement in some detail to show the scope of its operation upon this business, and to describe some of the conditions which arose as a result of the making and enforcement of that agreement.

In order that this explanation may be clearly apprehended, we will state in a brief way what the evidence in

this case shows to have been the purposes of the agreement and of the colossal organization it created.

It is unmistakably clear from the terms of the NATIONAL AGREEMENT itself, and from the prior and subsequent history of the business as conducted by ORGANIZED BASEBALL, that the main objects of that agreement were:

(1) To establish an organization which would embrace every enterprise in the whole United States engaged in the business of providing exhibitions of professional baseball for profit.

(2) To prevent any of these units thus brought within the organization from engaging in any business competition among themselves.

(3) To render it impossible for any of these units to get out of the organization with any hope of surviving thereafter.

(4) To make it impossible for any new and independent organization to enter the business of providing exhibitions of professional baseball for profit.

(5) To provide the means for the ready extermination of any new and independent organization if by chance one should enter the field.

In a word, the purpose of this agreement was to eliminate the possibility of competition by establishing an absolute monopoly over the business.

The testimony shows without contradiction that every league and club in the United States engaged in providing exhibitions of professional baseball was brought within the operations of the NATIONAL AGREEMENT; the entire territory of the United States being covered by the agreement

Under the agreement all of these leagues and clubs throughout this territory undertook to be bound by and to observe certain rules which were intended to render it impossible for any independent organization to be created or, if created, to survive. It is manifest from the very language of the provisions of the agreement that the object which was directly in contemplation when they were drafted, was, in the first place, the erection of insuperable obstacles to the establishment of any competing enterprise, and, in addition, to provide a powerful and sure weapon for the destruction of any organization that might have the hardihood to challenge the power of the monopoly which was thereby created.

*The Parties To The* NATIONAL AGREEMENT.

A brief reference should be made to the parties signatory to the NATIONAL AGREEMENT, and the government of the organization which was created thereby. There were three parties to this agreement, the National League of Professional Baseball Clubs, the American League of Professional Baseball Clubs and the National Association of Minor Leagues.

The National League embraced a circuit of eight constituent clubs situated in the following cities: Boston, Brooklyn, New York, Philadelphia, Pittsburgh, Chicago, Cincinnati and St. Louis.

The American League embraced a circuit of eight constituent clubs located in the following cities: Boston, New York, Philadelphia, Washington, Detroit, Cleveland, Chicago and St. Louis. It will be seen, therefore, that the result of the warfare between Organized Baseball and the American League was the entrance of the American League into Organized Baseball and its

joining in the execution of the NATIONAL AGREEMENT.

The third party to the agreement, the National Association of Professional Baseball Leagues was created by an agreement dated September 6, 1901, known as the *National Association Agreement* (Rec., p. 132 et seq.), to which latter agreement all the minor leagues operating in the United States and their constituent organizations are parties.

These three parties to the NATIONAL AGREEMENT, therefore, represented every existing organization in the country engaged in the business of providing exhibitions of professional baseball, and together constitute ORGANIZED BASEBALL.

There was created by the *National Agreement* a body known as the NATIONAL COMMISSION, which consisted of the presidents of the two major leagues, and the third member named by them. In this body there was lodged by the terms of the agreement, the executive power of enforcing the provisions of the agreement, the legislative power of adopting rules and regulations to effectuate the objects of the agreement; and the judicial power of construing the provisions of the agreement and of ultimately determining any disputes or controversies arising under the terms of the agreement, or the rules and regulations enacted by the Commission in pursuance thereof, between League and League, between Club and Club, or between player and club (Rec., p. 37).

The *National Association Agreement* created a *National Board of Arbitration*, which was the governing body of the minor leagues, with powers similar to those of the NATIONAL COMMISSION (Rec., p. 134), save that there was an appeal from the determination of the *National Board of Arbitration* to the NATIONAL COMMISSION,

and save further that the jurisdiction of the *National Board of Arbitration* was solely over questions relating to the minor leagues.

We shall now proceed to demonstrate the purposes of the NATIONAL AGREEMENT, and to show what its result has been upon the business of baseball from the practical operation of the agreement.

The NATIONAL AGREEMENT is set out in the record at page 36. No explanation however detailed, no testimony however graphic could express in more definite or convincing language the fact of the actual creation, the scope and the effect of the monopoly of ORGANIZED BASEBALL than the following provisions of the NATIONAL AGREEMENT, the rules promulgated under its terms, the *National Association Agreement*, the constitutions of the two major leagues and of the standard form of contract between the player and his employing club.

The first article of the NATIONAL AGREEMENT declares that it is indissoluble, and brands any member violating its terms or withdrawing from it as "*the enemy of* ORGANIZED BASEBALL."

Article 3, Section 2, avoids the possibility of conflicts for public support in those cities of the major league represented both in the American and National Leagues.

Article 5, Section 1, prohibits any change in the major league circuit "without the consent of the majority of the clubs of each major league."

Section 2, of the same Article, guarantees that no minor league shall establish or maintain a club in a city on the circuit of either Major League, or within five miles of such city. (Like provision by the National Association

Agreement guarantees to each minor league the exclusive control over its territory. Record, p. 146).

Article 6 of the National Agreement in its first three sections shows the means by which the control over professional baseball players is to be retained by Organized Baseball. The general plan by which this is accomplished is commonly designated as "*the right of reservation*," the operation of which will be explained in a moment.

The all-embracing scope of the NATIONAL AGREEMENT is related by Mr. DAVID FULTZ, who was at one time a player in the National League, and who was at the time of the happening of the events in this case, president of the Baseball Players' Fraternity, as follows:

> "Asked if they were in competition with one another witness said they were all under an agreement. Under National Agreement competition for players' services is hardly possible. Among the clubs in Organized Baseball there may be competition for the services of free agents, including men who have not yet signed an Organized Baseball contract and college players. After player has once signed contract with the reserve clause he cannot arrange for employment with any other club in Organized Baseball" (Record, p. 191).

Mr. HERRMANN, who since the making of the NATIONAL AGREEMENT, has been Chairman of the National Commission, in telling of the scope of its operation and the size of the organization created thereby, said:

> "That outside of the amateurs Organized Baseball took in practically all the baseball players of the country" (Record, p. 420).

Again:

> "At the beginning of 1914, outside of those players already referred to in the semi-professional leagues,

all professional baseball players actually engaged in the game for a living were in the service of Organized Baseball, so far as we had knowledge" (Record, p. 421).

See further testimony of Mr. GOLDMAN, (Record, p. 106); and of Mr. JOHNSON, (Record, p. 452).

Article 22, Section 1, of the *National Association Agreement* (Record, p. 143) provides:

> "Article 22, Sec. 1. Any club member of any league or association, a party to or identified with the National Association Agreement, that shall enter into any negotiation to *become a member of* or in any way co-operates with *any organization* of professional baseball clubs *whose existence* will in *any manner conflict* with the letter and spirit of *this agreement* or the interests of any of the clubs operating under it, shall forthwith *forfeit all rights* and privileges conferred by this Agreement, said forfeiture to include its membership in any association a party to this Agreement, and all *rights of reservation to players* reserved during the current or any preceding season. The penalty herein imposed shall be positive and final and shall not be revoked unless by the unanimous consent of the Board or upon appeal by a three-fourths vote of the National Association of Professional Baseball Leagues."

*If a Player Even Negotiates With An Organiaztion Not a Part of* ORGANIZED BASEBALL *He Is Blacklisted.*

> "Sec. 2. Any officer, manager *or player* who shall enter into *any such negotiations* as referred to in Section 1 of Article 22, or who shall agree or contract to *play with any club a member of such organization,* shall *be declared ineligible* and subject to all the disabilities referred to in the preceding section." (Record, pp. 143-144.)

Article 27, Section 1 (Record, p. 146), guarantees the vested right and "exclusive control of its own territory"

to each league a party to the Agreement, and Section 2 assures to each league its existing circuit, which is not to be changed without the consent of a majority of the clubs in that league.

These extracts show that the purpose of the monopoly known as ORGANIZED BASEBALL was to insure to each league therein, and to each constituent club of any league freedom from competition from another member or league or from any sources outside of ORGANIZED BASEBALL, and so to unify the entire business of baseball as to provide means by which to destroy any competition to any league or club in ORGANIZED BASEBALL.

*The Right Of Reservation One Of The Means Of Perpetuating The Monopoly Of* ORGANIZED BASEBALL.

It is apparent that if every league and club in the country employing professional baseball players are brought into one organization and all the players are likewise subjected to the control of that great organization so as to prevent their ever getting out of it and accepting employment of the same kind with anyone else, then a complete monopoly over the business will be thereby established. Consequently, we find that as a fundamental part of the arrangement by which every baseball enterprise in the country was banded together in the monopoly known as ORGANIZED BASEBALL, a plan was adopted by which all professional players in the United States were subjected throughout their playing careers to one or the other of the clubs or leagues in ORGANIZED BASEBALL. Under the provisions of the NATIONAL AGREEMENT, whenever a player entered the employ of any club, he was bound upon his part to remain perpetually with that club, unless it choose to permit him to deal with some other club for his employment, or gave him an unconditional release, which latter method of parting with

him it could only do under certain restrictions, which made it certain that the player had become either by age or other reasons of no further usefulness to it as a player. And the remarkable part of this system thus erected by the NATIONAL AGREEMENT was that this perpetual control over great numbers of players could be retained without paying to them one penny. For example, in the case of a player who had been upon one of the teams for one playing season, under a contract for that one season, when that one-year contract expired the player was not free as in the ordinary case to look elsewhere for employment. Whether he desired to do so or not he was bound to come to terms with his employer for the succeeding year, unless the employer consented to his entering into negotiations with another club. If, therefore, a player was unwilling to accept what his employer had offered him for his services for the next year he could not play at all with any club anywhere in any league at any time. He might remain idle for years, but he would still, in order to play within the ranks of ORGANIZED BASEBALL, have to go back and either come to terms with his last employer or get his consent, as before stated, to negotiate with someone else. That this was not only the meaning and effect of the NATIONAL AGREEMENT, but that it had been uniformally enforced in this way, was shown by the uncontradicted testimony, and was expressly admitted by all of the witnesses for the defendants who testified upon the subject. The peculiar method by which this system of controlling players is accomplished is called in the NATIONAL AGREEMENT and by those controlling the policies of ORGANIZED BASEBALL, *the right of reservation.*

When the NATIONAL AGREEMENT was executed every professional baseball player in the United States, as a matter of course, became subject to that agreement, because every employer of such players in the country be-

came a party to it; there were no other sources of employment. As long, therefore, as ORGANIZED BASEBALL included every employer in the United States, its complete control over the entire business would be assured.

It was for the purpose of perpetuating the advantage which ORGANIZED BASEBALL obtained by the unification of the entire business at the time when the NATIONAL AGREEMENT was executed, that that instrument was so drawn as to make it impossible for any club or league or any player employed at any time by any club or league therein to have any dealings whatever with any new or independent organization that might at any time attempt to enter this business.

The following excerpts from the NATIONAL AGREEMENT, the Rules and Regulations passed in pursuance thereof, the Constitutions of the American and National Leagues, the *National Association Agreement*, and the form of contract used by ORGANIZED BASEBALL with players, tell the story of the right of reservations so clearly that no comment is necessary.

Sections 1, 2 and 3 of Article 6 of the NATIONAL AGREEMENT are as follows (Record, p. 39):

> "Section 1. All *parties to this Agreement pledge themselves to recognize the right of reservation* and *respect contract between players* and clubs *under its protection.* No *club operating under this Agreement shall at any time negotiate for the purchase or lease of the property of another club without first securing the consent of such club.*"

*The Threat Against Competition.*

> "Section 2. *Any club or league which harbors a player who refuses to observe his contract with a club member of any party to this Agreement, or to abide by its reservation, shall be considered an out-*

*law organization, and its claim to contractual and territorial rights ignored.*

"Section 3. The right and *title* of a Major League Club to its *players* shall be *absolute* and can be terminated only by release, neglect to comply with requirements under this *Agreement for reservation,* or failure to fulfill its contractual obligations. When a Major League Club serves notice of release on a player, not secured within that or the preceding year from a Minor League Club by it or another Major League Club, he shall be ineligible to contract with a club of another league, if, during 10 days after service of notice of release, a club of the league in which he is at the time playing shall demand his services."

*Simple Means To Insure Reservation.*

Article 7, Section 1 (Record, p. 42):

"Section 1. On or before the 1st day of October in each year the Secretary of each party to this Agreement shall transmit to the Secretary of the Commission a list of all players under contract to each of its club members on that date or at the close of the championship race of its league, whom *such club desires to retain* for the following season, together with those secured for future service by purchase or draft or while free agents and those under suspension for insubordination or other cause, as well as those ineligible for *refusal to respect reservation* by or contract with such club for that or a preceding season. The Secretary of the Commission shall thereupon promulgate all of such lists which conform to the limitation of the reservation privileges of clubs according to rank and classification as shown in Section 3 of Article VI, and *no player* thus *promulgated as reserved* shall *be eligible* to *contract* or play with any *National Agreement Club* other than that on whose list his name appears *as a reserved player* until he is regularly released by the reserving club."

Article 8, Section 1 (Record, p. 43):

"Section 1. All contracts between clubs and players in the Major Leagues shall be in form prescribed by the Commission. All contracts between clubs and players in the National Association shall be in form prescribed by that Association. Provided, however, *that no non-reserve contract* shall be entered into by any club operating under the National Agreement until permission to do so has been first obtained from the Commission when such contract concerns a Major League player, or from the National Board of Arbitration of the National Association when such contract concerns a player of that organization."

Section 3 (Record, p. 44):

"Section 3. When a player of a Major or a Minor League Club shall be suspended for a stated period, or indefinitely, in accordance with his contract and the constitution and by-laws of the League of which his club is a member, the Secretary of such Association shall give notice of such disqualification to the Secretary of the Commission, who shall at once promulgate the same, and such disqualified player shall not be eligible to play with or against the club of any party to this Agreement until such disqualification shall have been removed and notice of such revocation promulgated by the Secretary of the Commission."

And the following rules promulgated by the *National Commission* in accordance with its power so to do:

Rule 17-A (Record, p. 55):

"*A non-reserve clause* in the contract of a Major League Player *without the approval* of the Commission, or of a Minor League Player *without the approval* of the National Board, shall *not be valid.*"

Rule 19 (Record, p. 56):

"A National Agreement player, adjudged to have violated his contract, shall be declared and pro-

mulgated to be disqualified to play with or against any club under the National Agreement until reinstated on his application by the Commission, if he be a Major League player, or by the National Board, if he be a Minor League player. If, after full investigation, the tribunal having jurisdiction finds that such violation of contract was premeditated and with out palliating circumstances, the application of the offender for reinstatement will not be considered until the player has given satisfactory assurance that he will not repeat the offense, and will not be granted without the imposition of an adequate penalty."

Rule 20 (Record, p. 56):

*The Threat To The Player.*

"*A player who fails to report to or deserts* the club *having title to his services* shall be declared and promulgated to be *disqualified* as a National Agreement player until restored to good standing on his application by the Commission, if a Major League player, or by the National Board, if a Minor League player. In all cases of failure to report or desertion the offender may be reinstated with or without a fine, in the discretion of the tribunal having jurisdistion, provided, however, that *if the player shall have joined an outlaw team his application for the removal of his disability shall not be acted on within three years* after the commission of the offense."

Rule 21 (Record, p. 56):

*Insuring Publication Of Blacklists.*

"Rule 21. May 1st and October 20th of each year the President of each Major League and the Secretary of the National Association *shall report* to the Chairman of the Commission the name of any player in his respective organization who has violated his contract, *refused to report or deserted* his team, together with the date and details of his offending,

*for promulgation.* The Major League club neglecting to notify its President, or the Minor League club failing to report to the Secretary of the National Association such offenders prior to the date prescribed, shall be fined $50.00 for each omission. As soon after each of these dates as practicable, the Commission shall *promulgate a list of ineligible players.* A fine of $25 shall also be imposed on any club that disposes of a player offending under this rule or Rule 19 before his reinstatement."

Rule 26 (Record, p. 57):

*Player Automatically Reserved.*

"Rule 26. To retain title to a player who fails to report to or leaves the service of the club having title to him, such club is not required to tender a contract to the player on or before the first day of February of each year, as provided in the Agreement, but shall carry his name on its reservation list from year to year. The name of a player who has violated his contract shall not appear on the reservation list of a club."

Rule 28 (Record, p. 57):

*Blacklisting.*

"Rule 28. Every *National Agreement player* who *before, during* or *after* the *championship season* shall *participate in a game* with or against a *club harboring ineligible players,* or *controlled by ineligible players,* shall be punished for the first offense and *become ineligible* until restored to good standing. Every National Agreement club which negotiates or contracts with a player who has violated this rule before his reinstatement shall be fined $200. Before the infliction of such fine the player or club shall be given a full hearing by the Commission, if the accused belongs to a Major League, or by the National Board, if the party charged belong to a Minor League. A fine imposed

for this offense shall be paid into the treasury of the Commission if inflicted on a Major League club or player, and into the treasury of the National Association when inflicted against a Minor League player or club."

The following provisions of the *National Association Agreement* are pertinent on the right of reservation. The threat and the punishment for violation apply equally to the Minor Leagues and the maintainance of the Monopoly is buttressed by the provisions of this agreement. Article 15, Section 1 (Record, p. 141):

"Article 15, Sec. 1. All contracts between clubs and players shall be in writing in the form approved by the National Association. An informal contract, whether evidenced by telegrams or other writing, shall be valid for a period not exceeding fifteen days, but a formal contract must be tendered by the contracting club to the contracting player within said fifteen days. The failure of the club to so tender such formal contract will release the player from all contractual obligations thereunder, and the refusal of the player to execute such formal contract, when so tendered, shall extend the validity of his informal contract until he shall execute said formal contract, but he will not be eligible to play until he signs formal contract. 'Terms accepted' must be filed with the Secretary of the Association within ten days."

The contracts between clubs and players shall be in writing in the form provided by the *National Association.*

"Section 2. All Contracts used between National Association clubs and players shall be uniform as to phraseology except that Class AA Leagues may adopt their own form of contract subject to the approval of the National Board of Arbitration of the National Association. *Non-reserve contracts shall not be entered* into without the consent of the National Board of Arbitration of the National Associa-

tion. The Secretary of the National Association shall notify the Secretary of the National Commission of any such Non-Reserve contracts." (Record, p. 141).

*Threats to Players and Clubs.*

"Article 16, Sec. 1. No *club* shall enter into *negotiations* or *contract* with a *player* under *contract* to *another club* without the latter's consent. Any club violating this Article shall be fined by the Board not less than $100 or more than $250.

"Sec. 2. The question of playing exhibition games shall be regulated by the respective leagues having membership in this association; except, however, that *exhibition games* with any *club harboring* or playing a *disqualified player* shall be *absolutely prohibited.* Any club violating this Article shall be fined by the Board not less than $100, nor more than $250." (Record, p. 141).

*Blacklist.*

"Article 20, Sec. 1. On or before the first day of October in each year, the secretaries of leagues, parties hereto entitled to the privilege of reservation, shall transmit to the Secretary of the Board a reserve list of players then under contract with each of its several club members for the current season, and in addition thereto a *list of such players reserved* in any *prior annual reserve list* who have *refused* to *contract* with such clubs and of *all ineligible players.* Such players, together with all others thereafter to be regularly contracted with by such clubs (Namely, whose releases have been secured by purchase or draft under this Agreement for future service), and and shall be *ineligible to contract* with any other club of any league during the period of time between the termination of their contract and the beginning of the next season. The Secretary of said Board shall thereupon promulgate such lists, provided that no club shall be permitted to reserve any player while in arrears of salary to him."

*Punishment for Breach of Contract.*

"Article 23, Section 1. Any *player who violates his contract* and commits the offense known as *'Contract Jumping'* shall be *debarred* from filing an application for reinstatement for the period of *five years;* provided said violation be willful.

*Punishment for Breach of Reserve.*

"Any player *disregarding his reservation* shall be debarred from filing an application for re-instatement for the period of three years; provided said violation be willful.

"Re-instatement may then be granted only on such conditions and penalties as may be prescribed by the National Board of the National Association." (Record, p. 144).

*Blacklist Again.*

"Sec. 3. When a player or manager under contract or reservation by any club of an association party hereto shall be expelled, suspended or rendered ineligible in accordance with the provisions of this Agreement or the rules of such association, notice of such disqualification shall be given to the Board by the Secretary of the Association from whose club the player may have been thus disqualified, and the Board shall forthwith give notice of such disqualification to the several leagues acting under this Agreement. When a player shall *become ineligible* under the provisions of this Agreement, or by order of the Board, the Secretary of the Board *shall notify the several clubs* acting under this Agreement of such *disqualification.* From the receipt of any such notice all club members of associations acting under this Agreement shall be *debarred from employing* or playing with or against such *disqualified player.*" (Record, pp. 144-145).

"Article 24. Any player who has entered into a contract with any club of an association party hereto may be suspended without pay, or fined by

such club or association, for breach of contract or breach of any of the rules of such club or association, and he shall thereafter be ineligible to sign or play during the remainder of the current season with any of the clubs of any association acting hereunder, unless such disability shall have been sooner removed by the club or association by which he was suspended, or by the Board.

"Any player suspended for a period longer than ten days may appeal his case to the National Board of the National Association." (Record, p. 145).

*Disbanding Club Does Not Release its Players from the Group of Organized Baseball; Players Remain Property of League.*

"Article 25. The *disbandment* of a club or its *expulsion* from membership in any association acting hereunder shall operate as a *release* of its players from *contract or reservation by said club.* But the *services of such players* shall be *subject* to the *League officials* for the purpose of supplying the vacancy in membership, players' salary to continue." (Record, p. 145).

"Article 26, Sec. 1. Each association shall have the right to make and enforce all rules and regulations pertaining to the control, discipline and compensation of all players under contract with its club members. And *it may prescribe that all contracts* with its *players* shall be made *directly* with said *association,* assignable to its club members with the *right of reservation* to be *exclusively exercised* by said *association,* in which event all the provisions of this Agreement applying to contracts or reservations of players with and by club members, shall apply to such contracts and reservation of players, with and by said association; provided that such rules and regulations shall in no way conflict with the Provisions of this Agreement, or any rule, regulation or order of the Board.

"Sec. 2. Any *club member* or party to this Agreement, that may *lose a player by desertion,* except

'contract jumpers,' shall have the option on his services, *and in all cases* (except by purchase of release) the *player must return* to the *club he deserted* from, and at the same salary he commanded at the time of leaving his club.

"Sec. 3. *Players are prohibited* from joining any other club or clubs for the purpose of participating in championship games, after *the close of* the season of the league to which they are under reservation, under such penalties as the National Board of Arbitration may inflict. Clubs are also prohibited employing such players in any championship contest under penalty of forfeiture of games in which such players participated." (Record, pp. 145-146).

*No Dealing Permitted with Organizations Not Parties to National Agreement.*

"Article 28. *No game* shall be *played* between any *club* of *any league acting hereunder,* or any of its *players* under contract or *reservation with any club containing an ineligible player;* nor with a club that has played with another club either during the championship season or at any other time. A violation of this section shall subject each offender to fine, suspension or other penalty, in the discretion of the Board." (Record, p. 147).

"Rule 15. Upon the presentation of satisfactory evidence to this Board that any club in any league under this agreement (either through its officers, managers or player)—*has tampered with a player* under contract or *reservation* to *any other club* under this Agreement, said offending club shall be *fined* the sum of Two hundred Dollars." (Record, p. 151).

"Rule 19. *Non-Reserve clause contracts are abolished* and no such Non-Reserve contracts shall be promulgated, excepting by permission of the National Board of Arbitration of the National Association." (Record, p. 152).

The following provisions of the Constitutions of the National and American Leagues are equally pertinent upon the establishment of the monopoly. They compel each club to preserve its right of reservation.

"(Rec., p. 231), Sec. 6. The membership *may be terminated* * * * * *

(4) Playing of any game of ball with a club that is disqualified or ineligible under this constitution.

(10) *Disposing of a player* to a club not a member of this league, unless *by the unanimous consent of all the club members* of this league."

"Sec. 26. Each club member of this League shall be entitled to the right of reservation" (Record, pp. 235, 236).

*Making Contracts.*

"Sec. 27. This League shall adopt such form of contract as it may deem best for the protection of the rights of the parties hereto. All contracts must be approved by the president, and duly promulgated by him. No club shall at any time enter into negotiations or contract with any player under contract, agreement or reservation with or by any other National Agreement club, without the latter's consent."

*Expulsion of Players (i. e. Blacklist).*

"Sec. 28. Any player, while under contract with or *reservation by a League club,* who shall, *without the consent* of such club, enter the *service of any other club* in any capacity, shall be liable to *expulsion* by said League club. Whenever a club releases a manager or player without notice, or gives him notice of release in accordance with the terms of his contract and whenever it suspends or expels a manager or player, that club shall at once notify the

Secretary of this League, stating, in case of release, the date when same takes effect, and in case of suspension or expulsion, the cause thereof, and the President of the League shall immediately notify all clubs of such release, suspension or expulsion."

*Negotiating for Services.*

"Sec. 29. No player, without the consent of the club with which he is under contract or reservation, shall enter negotiations with any other club for future services, but if such consent be obtained, a player may negotiate for his release."

*Effects of Club Disbandment.*

"Sec. 30. The *disbandment of a League club* or its withdrawal from or loss of League membership shall operate as an award to the League of the players under contract and reservation with said club, but the right to contract with and reserve said players shall be subject to transfer to such other club as the League may designate after acceptance of their said services."

*Effect of Suspension of Players.*

"Sec. 31. No manager or player who has been suspended or expelled from a League club shall at any time thereafter be allowed to play with or serve in any capacity in any League club (either the one expelling him or any other) unless the term of suspension by the club has expired, or upon his appeal to this League or the National Commission, such suspension or expulsion shall have been set aside."

*Playing Against Ineligible Ulayers or Clubs Employing Ineligible Players Prohibited.*

"Sec. 32. No *game of baseball* shall be played between a League club and any other club that has *been expelled* from membership in this or any other National Agreement League. No game of ball shall be played betwene a League club and any other club employing or presenting in its nine a player ex-

pelled or under suspension from this League or otherwise *rendered ineligible* under the *laws of Organized Ball.*" (Record, p. 236.)

"Sec. 36. Any manager or player, while under contract with *or reservation* by, a League club, who shall, *without the consent* of such club, *enter the service of any other club* in any capacity, shall be liable to *expulsion* by said League club. Whenever a club suspends or expels a manager or player, that club shall at once notify the Secretary of this League, stating the date when the same takes effect, and the cause thereof." (Record, p. 253.)

"Sec. 37. No manager or player, who has been suspended or expelled from a League club, *shall at any time thereafter be allowed to play with,* or serve in any capacity, any League club (either the one expelling him or any other( unless the term of suspension by the club has expired, or upon his appeal to this League, such expulsion or suspension shall have been set aside."

*The Reserve Clause in the Contract.*

On page 107 of the Record is set out at length a contract with a major league baseball player of the precise form used at the time when the FEDERAL LEAGUE was organizing, and making its plans for the season of 1914-15. The following appears in the contract:

"The compensation of the party of the second part stipulated in this contract shall be apportioned as follows: 75 per cent. thereof for services rendered and 25 per cent. thereof for and in consideration of the player's covenant to sanction and abide by his reservation by the party of the first part for the season of 1913 * * *" (Record, p. 108).

*The Reserve Clause.*

Section 10 of the same contract says:

"In consideration of the compensation paid to the party of the second part by the party of the

first part as recited in Clause 1 hereof, the party of the second part agrees and obligates himself to contract with and continue in the service of said party of the first part for the succeeding season at a salary to be determined by the parties of such contract." (Record, p. 110.)

The following is typical of the reserve clause in minor league contracts:

"Fourth. It is further understood and agreed between both parties to this contract, that all the provisions and conditions of the National Agreement of the National Association of Professional Baseball Leagues be and they hereby are made a part of this contract." (Record, p. 154.)

"Fifth. The player agrees to abide by the reservation clause in this contract in the event that the club, or the league of which the club is a part, is forced to suspend operations on account of war conditions. This clause *is* void unless the club and league plays at least one-half of its originally adopted schedule playing season.

"This clause is binding only during the period of the war.

"No non-reserve contract shall be entered into by any club member of the National Association until permission to do so has first been obtained from the National Board of the National Association.

"Failure of a reserved player who has been tendered a contract on March 1st, to return said contract to the reserving club on or before March 20th, may be reported for indefinite suspension, and same promulgated." (Record, pp. 155-156.)

A few excerpts from the testimony show that the provisions of the NATIONAL AGREEMENT were literally enforced in practice.

EDWARD HANLON says (Record, p. 215):

"In the case of an old player on the reserve list, it meant that he had to play with that club, and he could not play with anybody under Organized Baseball without permission of the club in which he was reserved. This practice was continued by Organized Baseball. Witness has no knowledge that that system of reserving players has been abandoned by Organized Baseball.

"From 1903 down to the organization of the Federal League Organized Baseball had no competitors that witness remembers in the business of professional baseball in the whole United States, that is furnishing exhibitions of professional baseball and employing players. If a man couldn't make terms with his club he couldn't play professional ball in the United States. Players are reserved for year after year.

"Q. At the end of a man's term of employment, under the organized ball system, it is provided in these contracts that the club shall have a right to negotiate with him for employment for another year, or another season, upon terms to be agreed upon. Suppose they could not agree on terms, on a salary, for instance, for the next year. What was the situation then? What happened? A. He could not play professional baseball. If they did not agree on terms, he could not go anywhere else, could not play anywhere else under professional baseball.

"Q. How long could he be kept in that situation without employment? A. For year after year.

"Q. It would not prevent him from going to blacksmithing or plowing or anything like that, would it? A. No, sir. If they put him on the reserve list, they could not agree on terms, and they did not see fit to sell him or exchange him to somebody else, they would renew this reservation year after year, continuously. That is what it means."

CONNIE MACK, manager of a club in ORGANIZED BASEBALL, puts it graphically (Record, p. 439):

"Q. Suppose you cannot come to an agreement with him? A. I will tell you. If a player is at all reasonable we come to terms.

"Q. But suppose they are not? A. As a rule they are.

"Q. But suppose you don't think he is reasonable; suppose you can't agree? A. There are cases of that kind.

"Q. What happens? A. We just *let him lay there.*

"Q. Lay where, on the reserve list? A. He is left on the reserve list."

AUGUST HERRMANN, chairman of the National Commission, explains what happened to the players who did not observe the reserve (Record, pp. 426 and 436):

"Q. Will you please explain a little more fully what is meant by being on the ineligible list? A. A player not carrying out his contractual obligations, so to speak, and is automatically placed on the ineligible list until he applies for reinstatement.

"Q. What is the effect of a player being on the ineligible list? A. I cannot tell you that.

"Q.What is the difference between this ineligible list and an ordinary blacklist? A.A blacklist, I have always understood, in my life to mean somebody you did not want to take back in your employment, or something of that kind.

"Q. Can you tell us any difference between this ineligible list of yours and any ordinary blacklist of the kind you are speaking of? A. Yes, sir, because the ineligible list we had, ordinarily the player filed an application for reinstatement, which would be granted at once.

"Q. Always granted? A. I do not know of any instance to the contrary.

"Q. It depended on your decision, or your will, that is, yours and your two colleagues on the Commission, whether a major league player would be permitted to come back into organized ball, did it not? A. I do not know of a case to the contrary.

"Q. Do not let me misunderstand you? A. It depended on our decision, yes. And I do not know of a single case where an application for reinstatement was filed and it was not granted.

"Q. I am not talking about what you did. You may have been very gracious to them, but, as a matter of fact, when once a man was on the ineligible list, no club in Organized Baseball, that is to say, no club in the United States, before the Federal League came in, engaged in furnishing baseball exhibitions as a professional matter, would be permitted to even negotiate with him for his services, would it? A. That is correct, because we agreed among ourselves to respect the reservation clause of each other's clubs, which we thought was necessary to maintain the game.

"Q. And if a player is of a high class so that he is worthy of the company in which he is, when he comes to the second year he is given a contract with a reserve in it for the following year, is he not? A. Yes, sir. He is not required to sign it if he does not want to.

"Q. Supposing he does not sign it; what does he do? A. As a rule, he has always been anxious to sign, because he is being compensated for reservation.

"Q. And if he does not want to sign, what happens? A. That ends it. He becomes a free agent.

"Q. Oh, well, would he become a free agent? A. I would say yes.

"Q. Could he go out and play in any other club in organized ball? A. If he got employment, yes. There is no rule against it.

"Q. There is no rule against his being employed? A. We drop them in cases of that kind. Contracts are not always renewed. Some players want to quit the profession of their own volition. We do not carry them on the reservation list then, we carry them on the voluntary retired list.

"Q. But supposing he does not want to quit the profession, but wants to play baseball, but does not want to sign a contract with the reserve clause in it. What happens to him then? A. He does not sign. He has not got employment with the club he is negotiating with, I suppose.

"Q. Could he get employment with any other club in Organized Baseball? A. I do not know.

"Q. You know as a matter of fact, Mr. Herrmann, do you not, that it would be against the rules? A. I do not imagine any other club would take him, because I have always felt, and we all feel that reservation is absolutely necessary to keep the game alive.

"Q. Certainly, that is true. A. And we cannot do without it.

"Q. And therefore it is just as I have indicated, that he must sign a contract with the reservation clause in it; is not that true? A. Yes." (Record, p. 436.)

See also testimony of—

Goldman, pp. 106, 107, 113, 114, 117, 130.
Walsh, pp. 177, 178, 183, 184.
Maisel, p. 186.
Priest, p. 188.
Mowrey, p. 224.
Russell, p. 226.
Gilmore, pp. 375-376.

It will be observed that counsel for defendants in error did not realize the limits to which the right of reservation had been extended as appears during the

cross-examination of witness of plaintiff in error, GOLDMAN:

> "That was the system of Organized Baseball. That is the system by which they held together these five or six thousand ballplayers, the entire body of ballplayers.
>
> "Asked '*When you say the entire body,* you know, do you not, that *the reserve clause was present* only in the *major league contracts;* it *had no place in any minor league, had it?*'—to which witness answered, 'I have not examined that contract for quite a little while—but the reservation applied to all of them.' " (Record, p. 129.)

After demand of the plaintiff in error to produce at the trial all the non-reserve contracts in existence, which, under the provisions of the NATIONAL AGREEMENT were in the custody of the NATIONAL COMMISSION, counsel for defendants in error finally made the following admission: in open Court:

> "Thereupon counsel for defendants, Mr. Pepper, made the following statement in open Court:
>
> " 'I would like to say, while I am on my feet, may it please the Court, that Mr. Douglas has requested, very properly, the production of the list of so-called non-reserve players in the minor leagues. I find upon investigation that I was wrong in my impression respecting the reserve clause. I stated, or implied, during the examination or cross-examination of the plaintiff's witnesses, that the reserve clause was present only in major league contracts, and Mr. Goldman very properly called attention to the fact that under the rules of the National Association minor league contracts also must have the reserve clause, unless its insertion was dispensed with by a certain central authority and in that event lists of non-reserve contracts were to be filed with the secretary of the National Commission. On investigation I find that no such lists have been filed, and there-

fore presumably the minor league contracts had the reserve clause in them. That is a misapprehension of counsel which I am glad to correct." (Record, p. 269.)

*Analysis.*

The effect of these various provisions of the NATIONAL AGREEMENT, and the rules and regulations, and of the reserve clause in the contract, is to place the following restrictions upon any **club** in ORGANIZED BASEBALL:

First. That no contract shall be entered into between such club and any player without incorporating therein a provision which enables the club to retain the perpetual right of employment, which the so-called reserve clause was designed to give.

Second. It cannot negotiate with any player of any other club who is subject to reservation under this contract. By reason of its incorporation into the contract of all the players employed by all the clubs of OGRANIZED BASEBALL in accordance with the restriction set forth in the preceding paragraph, the effect of this Second restraint is that no club can negotiate directly with any player, but must negotiate in the first instance with the club last employing him.

Third. No club embraced within ORGANIZED BASEBALL is permitted to negotiate with any player who has at any time failed to respect the right of reservation in his contract. That is to say, any player whose actual period of service, as specified in his contract, has expired, and who thereafter for any reason ceases playing baseball, is not permitted, when he desires at any time to resume playing professional baseball, to seek employment with any other club in ORGANIZED BASEBALL save the one with whom he was employed at the time he so ceased playing. This

right of the last employing club to the service of such player is perpetual, and even though a player may have left baseball for the purpose of entering different employment, and may have been engaged in such employment for a period of years, the right to his services is still retained by his last employer, and he must re-enter ORGANIZED BASEBALL through that employer or not at all.

Fourth. Every club in ORGANIZED BASEBALL is prohibited under stern penalties from employing, or having in its service, or playing a game with any club that has in its service any player who has been blacklisted because of his failure to respect the right of continuous and perpetual service on the part of his last employer in ORGANIZED BASEBALL—that is to say, who has failed to respect the "right of reservation" of such employer.

The effect of these various provisions of the NATIONAL AGREEMENT, and the rules and regulations, and the reserve clause in the contract is to place the following restrictions upon any **player** at any time employed in ORGANIZED BASEBALL:

First. That when a player is employed by any club in ORGANIZED BASEBALL his contract must embrace the reserve clause as above explained.

Second. He must at the expiration of his term of service as specified in his contract remain subject to re-employment by the club with whom he has such contract, *irrespective of whether the compensation or other terms of employment are satisfactory or not;* and he is forbidden forever from negotiating with any other club in ORGANIZED BASEBALL unless the right to negotiate with him is assigned to some other club by the club with whom he is under the contract containing the right of reservation.

Third. If he fails to agree with his last employer with whom he is under contract, and consequently under reservation, his only alternative *is to quit professional baseball*, because he is excluded by the provisions of the NATIONAL AGREEMENT, and the rules and regulations above set forth, from the possibility of being employed by any club in ORGANIZED BASEBALL, and if he seeks employment as a professional baseball player outside of ORGANIZED BASEBALL (and with the exception of the FEDERAL LEAGUE and one or two other short-lived organizations there was never any such possibility of outside employment), (Record, pp. 410, 421, 453), he is rendered ineligible from ever again being employed by any club in ORGANIZED BASEBALL.

*Summary.*

Summarizing, the effect of the monopoly established by ORGANIZED BASEBALL through the NATIONAL AGREEMENT, the rules and regulations of the NATIONAL COMMISSION promulgated in pursuance thereof, and the *National Association Agreement* of Minor Leagues, and the operation in practice of these various provisions, it is:

**First. Every league and club in the United States engaged in the business of providing exhibitions of professional baseball is subjected to these provisions, and brought within the combination known as Organized Baseball.**

**Second. Every player in the United States engaged in playing professional baseball regularly for compensation is subjected to the control of these rules and regluations, and consequently to the domination and control of Organized Baseball.**

**Third. Every league and club is prohibited from ever getting out of Organized Baseball and freeing itself from**

the operation of the provisions of the various contracts under penalty of being declared an enemy of Organized Baseball and being subjected to extermination.

Fourth. Every player is, under penalty of blacklist, prevented from ever going out of Organized Baseball.

Fifth. As a result of these four direct consequences of these provisions and their enforcement, any new or independent organization attempting to compete with Organized Baseball must face the following conditions:

1. Every club or league in the United States is forbidden to deal with such new or independent organization in any way whatever.

2. Every professional baseball player in the United States is prohibited from dealing with such new or independent organizations. The testimony in this case shows that any new or independent organization must face the fixed determination of this colossal aggregation known as Organized Baseball to crush it by the use in all available ways of its great power, which power it has always successfully used in the past to destroy any possible competition.

### Effect of the Monopoly of Organized Baseball and Its Conspiracy in Restraint of Trade, Upon the Federal League, and Particularly Upon the Federal Baseball Club of Baltimore.

It is important to observe that the grip of the monopoly was not obtained alone from the operation of the agreement, merely as a conventional instrument, but from the practical and actual conditions which resulted from the binding together of every organization carrying on the business of giving exhibitions of professional baseball in accordance with the terms and purposes

thereof. If we assume, as is the fact, that the NATIONAL AGREEMENT, so far as a legally valid instrument is concerned, is and always has been mere wastepaper, being clearly in violation of the common law and of the Sherman Act, and was known so to be by the parties thereto as well as everybody else, still, the important point to be apprehended is that the thirty-five or forty leagues, giving exhibitions of baseball, and employing players, had, among themselves, agreed to this plan of monopolistic organization, *and, as a matter of fact, operated scrupulously, over a period of many years, in accordance with its purpose, intent and provisions.* No single league or club, subject to the NATIONAL AGREEMENT, could break away from the combination without subjecting itself to immediate assault from every other baseball league in the country, and without facing conditions of warfare which would jeopardize its existence.

The testimony in this Record is uncontradicted that from 1903 down to the organization of the FEDERAL LEAGUE in 1913 no organization in the United States, worthy to be classed as one giving exhibitions of professional baseball, that is, an organization conducting the business for profit, and employing a team of professional players regularly, ever operated independently of the NATIONAL AGREEMENT, and independently of the dominion which it was the purpose of that agreement to establish over this business, except two leagues, the Pacific Coast and the United States, *which leagues were promptly destroyed* by the acts of ORGANIZED BASEBALL (Record, p. 410).

It is apparent, of course, that the intent and purpose of bringing these corporations and organizations under the control of the NATIONAL AGREEMENT were, *first*, to establish a complete domination over all corporations or organizations engaged in this business, and

*second*, to create an absolute control over the players. Both of these objects were mere steps in the comprehensive plan of controlling the entire business of giving exhibitions of professional baseball.

## Interferences by Organized Baseball with the Federal League and Its Constituent Clubs, and Illegal Acts on Its Part Designed to Wreck the Business of the Federal League, and Particularly the Business of the Appellee.

### *Intimidation of Players.*

The first contact of the Federal League with the monopoly of Organized Baseball was in the attempt to employ players. The witnesses Goldman, Knabe and Hanlon, who had particular charge of employing players for the plaintiff in error, testify that when they attempted to employ any player engaged in professional baseball, they were met with a situation of almost insurmountable difficulty. The completeness with which Organized Baseball dominated the players was manifested by the fear, which they expressed, that if they once entered into the employment of any independent organization, it would mean that they were forever shut out of Organized Baseball, and that their sole means of making a livelihood out of their profession would be limited to such employment as they could find with plaintiff in error and the other constituent clubs of the Federal League; in other words, that thereafter they would be excluded from employment by every other organization in the country employing players except the eight clubs of the Federal League.

Being thus deterred by the complete monopoly which Organized Baseball had established, the players would only consider employment by the plaintiff in error upon such terms as were almost prohibitive. This was the

situation as to the great mass of the players who were approached by representatives of the plaintiff in error. Consequently, all the players who were finally induced to enter the employment of the plaintiff in error had to be offered a salary which was far in excess of what they had received while in the employ of ORGANIZED BASEBALL, and, with a few exceptions, the only players who could be induced to accept employment were those who were nearing the end of their professional careers, that is, the old players, about ready to retire, who felt that the terms which were offered by the plaintiff in error would more than compensate them for the risk which they were taking in defying ORGANIZED BASEBALL.

Mr. GOLDMAN, who was connected with the committee having in charge the employment of players for plaintiff in error, stated that the club

> "had to take old players; give them long-term contracts, in most instances eliminate the ten-day clause, and pay them substantial sums on account of salary; had to pay them larger salaries than they had been earning or were paid to players in the same class in other leagues; that younger players would not take the chance with the Federal League, knowing that to sign with it rendered them ineligible for future employment by Organized Baseball; that they had to go to the ranks of Organized Baseball to get players, as there were none elsewhere that they knew of" (Record, p. 118).

The FEDERAL LEAGUE and the plaintiff in error took the view that the great network of agreements and contracts by which ORGANIZED BASEBALL undertook to control the entire body of professional players in the United States amounted to an illegal combination, and that the separate contracts with the players which were only a part of the plan of ORGANIZED BASEBALL to effectuate their control, were entirely illegal and ought not to be respected.

*There were no professional baseball players in the country not subject to these contracts, and the only way by which any players could be obtained would be by negotiating with those under such contracts. If the* FEDERAL LEAGUE *and its members could not so negotiate with them, it would mean that there never could be any competition with* ORGANIZED BASEBALL.

Mr. HANLON, an old baseball player and manager, who was a director in the Baltimore Club, and on its Players' Committee, testified that he

> "had occasion to talk with several players, and they all gave witness to understand why they wanted contracts for three years, salaries as much as they were then receiving, and large bonuses, because they said they did not believe that when their contracts expired, if the Federal League should fail, they would be taken back into Organized Baseball" (Record, p. 217).

OTTO KNABE, the manager of the Baltimore Club during its operations, and who, at the time of testifying in this case, was in the employ of the defendants in error, said, with reference to the employment of players by the club:

> "That almost all players wanted three-year contracts because they realized that they were going into a new organization and that they were leaving an organization that had been in the field for a number of years, and therefore they wanted to be sure of getting three years, and that is why they insisted upon a three-year contract; that a major league player would not come for less than three years, and witness does not think he signed one for less than three years. Players also felt that if they left Organized Baseball they would have a lot of trouble getting back into it; that was the reason they gave me" (Record, p. 177).

The uncontradicted evidence in this case is that this fear of the players was justified by the attitude of ORGANIZED BASEBALL. This is conclusively shown by the fact that when ORGANIZED BASEBALL succeeded, in the fall of 1915, in getting GILMORE and SINCLAIR, the leading promoters of the FEDERAL LEAGUE, to desert their associates and "sell out" to ORGANIZED *BASEBALL*, in order to avoid the penalty which had fallen upon the players who had joined the various clubs of the FEDERAL LEAGUE from being visited upon them until the end of their lives, namely, the impossibility of thereafter obtaining employment in ORGANIZED BASEBALL, a special provision was incorporated in the so-called Peace Agreement, as follows:

> "(2). All baseball players, managers and umpires heretofore or now under contract, reserve, extension or option with any of the constituent members of the Federal League, or said Federal League, are hereby agreed to be eligible to play in any club operating under the National Agreement, and the said players, managers and umpires and the contracts existing between said Federal League or its constituent members and such players, managers and umpires shall be recognized and respected by the National and American Leagues and all Leagues subject to the National Agreement. A full and complete list of said players, managers and umpires is hereto attached and marked Exhibit 'A.'" (Record, pp. 170 and 171).

The provision was inserted for the purpose of removing from ORGANIZED BASEBALL'S BLACKLIST the names of those players who had left ORGANIZED BASEBALL and had joined one of the clubs in the FEDERAL LEAGUE. This was one of the terms of settlement. It will be seen hereafter that it was not through any desire to help the players that this action by ORGANIZED BASEBALL was taken, but it was induced by two causes, first, by the fact that a

part of the consideration moving to GILMORE, SINCLAIR and the other promoters of the FEDERAL LEAGUE concerned in its betrayal was that they should have the right to assign to clubs in ORGANIZED BASEBALL their contracts of employment with the players upon the clubs which they controlled, and realize the money value of these contracts. For these assignments about $130,000 was paid to SINCLAIR alone by ORGANIZED BASEBALL (Record, p. 338). Secondly, it was induced by the desire of ORGANIZED BASEBALL to get control of the players and prevent the possibility of another independent organization arising to employ them.

On January 18th, 1916, the effect of the PEACE AGREEMENT (which recorded the terms of the conspiracy by which the FEDERAL LEAGUE was destroyed) was thus stated in an announcement by Messrs. HERRMANN, JOHNSON and TENER, constituting the NATIONAL COMMISSION:

> "The right of the Federal League to such players (Federal League players), whether they violated contracts or refused to recognize reservations, is recognized, and that League has full authority to dispose of them.
>
> "If, however, such players are released outright by the Federal League, the National Agreement clubs which they deserted will have priority of right to their services, if they desire to secure them." (Record, pp. 272 and 273.)

Reference should further be made in this connection to the decision of the NATIONAL COMMISSION in Case No. 1297, entitled, *"In re. Controversy Relative to Player Dickson's Status,"* where there is quoted, as a part of the decision of the NATIONAL COMMISSION, a letter from E. W. GWINNER, president of the Pittsburgh Federal League Club, dated January 28th, 1916, about a month after the wrecking of the FEDERAL LEAGUE, as follows:

"As the Federal League *has come to an agreement with Organized Baseball to go out of business,* and as your contract with this Company has expired, we take this opportunity to notify you that you are a free agent, and are at liberty to negotiate with any baseball club in Organized Baseball for a position. I want to thank you for the way you performed for me while in my employ, and I wish you good luck in whatever you may get interested in, and if you should ever be in this city, I will be pleased to see you" (Record, pp. 279 to 280).

The decision of the NATIONAL COMMISSION in the case of player Benny Kauff is enlightening. The Commission says:

"*Prior to the adoption of the peace agreement, the National Association had by resolution declared that players who deserted its teams and played with Federal League clubs, would not be permitted to return to their former clubs. With this in mind the major leagues at the peace conference agreed that the Federal League clubs should retain control and dispose of players at that time under contract or optional reservation to them.* The name of player Kauff appears on the list of the players retained by the Brooklyn Federal League Club, which subsequently transferred him to the New York National League Club, under the provision of the peace compact, with which he is now playing.

"*The player's application for reinstatement in organied baseball was disallowed by the Commission in a decision promulgated on May* 1, 1915. *Until the adoption of the peace agreement containing the stipulation that all Federal League players should be returned to good standing in organized ball, none of them who had disregarded contracts with or reservation by national agreement clubs were eligible to play with major or minor league clubs*" (Record, p. 115).

Apart therefore from the obvious meaning and effect of the NATIONAL AGREEMENT and the individual contracts

of employment which have been heretofore reviewed, it is clear from the provision of the PEACE AGREEMENT and the announcement and decision of the NATIONAL COMMISSION, just quoted, that the understanding of the players in ORGANIZED BASEBALL, as expressed to Messrs. GOLDMAN, HANLON and KNABE, was correct. They knew that if they left the employ of ORGANIZED BASEBALL, and went to the FEDERAL LEAGUE, they would be forever barred from re-entering the employ of any organization under the dominion of ORGANIZED BASEBALL, that is to say, every organization in the United States except the FEDERAL LEAGUE.

And, as further clearly evidencing the attitude of ORGANIZED BASEBALL toward players who took employment in the FEDERAL LEAGUE, the notice of Messrs. HERRMANN, JOHNSON and TENER to all NATIONAL AGREEMENT clubs, dated February 8th, 1916, is pertinent:

> "In all cases in which a player, in accordance with the Commission's recent ruling, has reverted to a National Agreement Club, as the result of his unconditional release by the Federal League or any of its clubs, it is the duty of the club to which he returns, to promptly contract with such player, transfer him to another club, or waive all claim to him in writing.
>
> "Players so released by the Federal League, or any of its clubs, are directed to forthwith apply to the clubs to which they revert for employment.
>
> "Major league clubs are instructed to notify the president of their respective league what action, if any, has been taken relative to players which have reverted to them.
>
> Minor league clubs are required to file similar reports with Secretary Farrell. In all instances in which the interested National Agreement Club does not use ordinary diligence in signing or disposing of the player, its right to him will not be recognized" (Record, p. 273).

Just a word on other interferences and efforts to wreck the FEDERAL LEAGUE. DAVID L. FULTZ, president of the Baseball Players' Fraternity, in January of 1914 made certain demands upon the NATIONAL COMMISSION for modification of baseball players' contracts. After an agreement had been reached upon the disputed points Mr. FULTZ testifies that Mr. HERRMANN, the chairman of the NATIONAL COMMISSION, then asked them, "If they would not expel from the fraternity all players who went to the FEDERAL LEAGUE; that witness told him they were not going to enter into the fight between ORGANIZED BASEBALL and the FEDERAL LEAGUE" (Record, p. 183).

Note that this effort was made before the FEDERAL LEAGUE had played one game as a major league.

In the same year, February, 1914, a letter was written to JAMES WALSH, who had signed a contract with plaintiff in error to play for it during the seasons 1914, 1915 and 1916, by the owner of the Montreal Club, to which club he had been sold by the Philadelphia National League Club, which says in part, "and if you start to play with them, you are blacklisted from ORGANIZED BALL for three years, and if their League blows up I don't know what you will do for three years" (Record, p. 179).

HARRY H. MOWREY, a player whom the plaintiff was endeavoring to secure for its team, testifies that he was talking to Mr. DREYFUSS, president of the Pittsburgh National League Club, and JOHN K. TENER, president of the National League and member of the NATIONAL COMMISSION, who were endeavoring to have him sign a contract with the Pittsburgh National League Club for 1914, and during the course of their conversation he says, "They started to convince him that the FEDERAL LEAGUE would not last, and GOVERNOR TENER said he did not expect the Federal League to last twenty-four hours. Wit-

ness eventually signed a contract with Mr. Dreyfuss" (Record, p. 225).

The testimony shows that there were from eight to ten thousand professional ballplayers in the United States in 1914, all of whom were controlled by the various leagues and clubs constituting ORGANIZED BASEBALL. Only about four hundred of these were employed by the two major leagues.

There was ample talent, according to the testimony in this case, in the minor leagues, and among players who were uselessly prevented from playing by ORGANIZED BASEBALL, under the operation of the reserve clause, to provide players for an additional major league.

It has been testified that in the whole country there are only a few "stars," as they are called in baseball parlance, that is, players who stand out preëminently above all others. Outside of these few players, there are hundreds, and maybe, a thousand or more, who play baseball of a very high type, and whose comparative skill shades off so gradually as to be practically imperceptible.

Mr. HANLON, whose experience as a manager of major league clubs is probably unsurpassed by that of any man in the country, testified as follows:

> "Witness does not know that there is always more of a demand for skilled players than there are players to meet the demand. There are about six players who are stars who stand out more than any others in the profession. Stars never have any trouble in getting employment.
>
> "The skill and ability of many of the ten thousand professional baseball players in the country is covered up as yet, and 'if they had opportunity possibly they might rise to the average ball player in the

> major leagues.' Asked if there was any way in which opportunities can be given to those unknown players better than to develop them through the minor league system, the witness answered: 'My experience has been that they have been left down there year after year, some of them, and it may be possible if they have had a contract for a year or two or three years and that contract expired they might be in a position to better their profession'." (Record, p. 222).

See also testimony of Mr. GOLDMAN (Record, pp. 123 to 128).

The suggestion, therefore, which has been made in this case by the defendants in error, that there was no room for a third major league because of a lack of talent, is without the slightest foundation in fact.

*Efforts of Organized Baseball to Destroy the Confidence of the Public and the Players in the Ability of Federal League and Its Members to Continue Business.*

But even with all the difficulties which the monopoly of ORGANIZED BASEBALL presented to the organization of the FEDERAL LEAGUE, those in control of that monopoly were not willing to rely upon them alone to prevent the FEDERAL LEAGUE from permanently establishing itself. The despotic attitude of those in control of ORGANIZED BASEBALL, and the intense bitterness of their resentment at any outside interference or competition with their monopoly, is well evidenced by the interview given to the New York *Sun* by MR. BYRON BANCROFT JOHNSON, president of the American League and a member of the NATIONAL COMMISSION, and intended by him to be, as it was in fact, circulated throughout the press of the country.

The historic background of the interview is important. Fifty or more of the best baseball players in the United States, *who had not yet signed contracts for the season of* 1914, were to arrive in New York, after a tour around the world, on the day following the interview, and the obvious purpose of it was to deter any of these ballplayers from engaging their services to the new organization.

The JOHNSON interview is as follows:

"Johnson, who was seen at the Biltmore Hotel, declared war against the Federal Leaguers in forcible terms. He cut loose when he heard that James A. Gilmore, president of the Federals, and his attorney, E. E. Gates, of Indianapolis, was talking over the situation with James E. Gaffney, of the Boston Nationals, and former Police Commissioner W. F. Baker, owner of the Phillies.

"'I don't favor these confabs,' said Big Ban. 'If the idea is to bring about a peaceful settlement of the present trouble in baseball the American League will put a stop to all negotiations. There can be no peace until the Federal League *has been exterminated.* Put it just as strongly as you can that we will fight these pirates to a finish. There will be no quarter.

"'Yes, I've heard that peacemakers are at work, but they are wasting their time. The American League *will tolerate* no such interference. We have come here to greet Comiskey, McGraw and the World's tourists, and we will refuse to take part in any peace confabs.

"'This Federal League movement is taken too seriously; why, the whole thing is a joke. They are holding a meeting once a week to keep from falling to pieces. Quote me as saying that the Federals have no money in Buffalo, Indianapolis and Pittsburgh. They have no ball parks in any of their cities, except an amateur field in Kansas City and a ramshackle affair in Pittsburgh. There are some

wooden bleachers put up on Hanlon's Park in Baltimore, I believe.

"'We hear from day to day that the Feds have millions behind them. If that is true they ought to build half-million-dollar stadium in a few weeks. But getting down to brass tacks, they have neither grounds nor players that amount to anything.

"'When the list of players is finally announced the baseball public will realize what a bluff these fellows have been putting up. They have many unknown players, taken off the lots, and a bunch of bush leaguers, with a sprinkling of big fellows. But the American League will not lose more than ten men.

"'Blanding has gone back to the Clevelands. Yes, it is true that he was induced to sign with the Federals first, but he belongs to Somers, and we will take his case to the courts. *We are going to cut and slash right and left from now on.* We intend to show up the fourflushers and bluffers in the proper light.

"'I haven't answered Gilmore's telegram, relating to tampering with players. I do not intend to answer it. Gilmore knows little or nothing about baseball, so why waste time over him? If the National League sells the Cubs to Weeghman and the Cardinals to Stifel that will not concern me. I know nothing about it, but I doubt very much if Weeghman would be willing to put up much money. Just say in the Evening Sun once more that we are going to fight the Federals until they have been counted out.'" (Record, pp. 198 and 199).

In this connection, we also call attention to the testimony of Mr. JAMES A. GILMORE, who, having sold out and betrayed his associates in the FEDERAL LEAGUE, turned up at the trial of the case as the star witness of the defendants in error. He was himself made a defendant in the suit, but never appeared to defend it. Upon

the character of his testimony some observations will be made hereafter. Speaking of these interviews by MR. JOHNSON and the other magnates of ORGANIZED BASEBALL, GILMORE testified:

"Q. I wondered if anybody could refresh your memory so that you could recall that interview of Ban Johnson's in the New York Sun the day before the players landed on the Lusitania from that trip abroad; do you remember that? A. I think Mr. Johnson made a statement to the effect that we did not have any ball parks, and we did not have any players, and several other comments.

"Q. And a good many things that were not true? A. Most of them were not true.

"Q. Why did not you tell me about that just now when I asked you about what he did to injure you? You could not remember it? A. I never thought of it; I recall it now.

"Q. Did you swear to this, in the ninth paragraph of this bill: 'Immediately upon the entry of said Federal League into the business of baseball, organized baseball as an entirety and in its constituent membership, and particularly the defendants, Herrmann, Johnson and Tener, conspired and confederated together to injure or destroy the business of the plaintiff and its constituent members'? That was true, was it not? A. Yes.

"Q. But you cannot recall any of the things that they did except what you said? A. They only did it by acts such as I have just related, by interviews in newspapers and having it printed broadcast.

"Q. They did do that, did they not? A. They made those statements, I guess; at least they were printed in the newspapers. I did not go around to investigate them and find out whether they were true or not, or whether Mr. Johnson said this or that or anything else.

"Q. You charged them with it, did you not? A. Yes, it was in the newspapers.

"Q. Did they deny these charges you made against organized baseball? A. Did they deny them?

"Q. Yes. A. I don't recall what their answer was.

"Q. They never denied the publication in the newspapers to which you refer, did they? A. I don't know.

"Q. Did you ever hear of any denials from them? A. No, sir.

"Q. Did not you swear to this—I have understood you to say you did not feel any of these things—did you swear to this: 'As soon as the plaintiff undertook to become a league of major importance the defendants, or some of them, and their confederates and co-conspirators, or some of them, publicly and privately, from the banquet board, through the public press, and to individual players, considering the entry into contracts with the constituent members of the plaintiff, knowingly, falsely stated that the plaintiff and its constituent members were financially irresponsible,' or words to that effect. Did you swear to that? A. Statements that were made in the newspapers, supposed to have been made by certain members, and I swore to it, yes, sir.

"Q. When you swore to that it was true? A. Yes, sir.

"Q. And you stand by it now? A. Yes, sir.

"Q. Do you remember Johnson stating that the Federal League would bust on Decoration Day, then another that it would bust on the 4th of July, and still another that it would bust before the end of the year? A. I recall that there were many predictions made as to our failure.

"Q. You can answer that question? A. I don't know; I do not recall the dates.

"Q. I did not ask you about the dates; I asked you about the man, Ban Johnson; did not Ban Johnson make those charges against you? A. It was in the newspapers.

"Q. He never denied them so far as you know? A. No." (Record, pp. 370 and 371).

The bill of complaint from which the paragraphs were read in the testimony above quoted was filed in the United State District Court for the Northern District of Illinois before the Hon. KENESAW M. LANDIS, Judge of said Court, in January, 1915, by the FEDERAL LEAGUE, against ORGANIZED BASEBALL, to enjoin the latter organization from interfering with the players of the FEDERAL LEAGUE and from committing other unlawful acts, directed towards its destruction. This case was still pending on December 17, 1915, (Record, p. 229, 307). To this bill of complaint, GILMORE made oath (Record, p. 363), and when, as a justification for his action in betraying his associates in the FEDERAL LEAGUE, he sought upon the stand to belittle the injury which ORGANIZED BASEBALL had inflicted upon the FEDERAL LEAGUE, he was confronted with the specific allegations of his affidavit in the suit in equity in the Northern District of Illinois, and the Court will find, upon a review of GILMORE'S cross-examination, that he gives, although reluctantly and contrary to his desire, the strongest possible support to every allegation which has been made in this case. While GILMORE was produced for the purpose of negativing those allegations, and did attempt to do so upon the stand, plaintiff in error was able to produce the most conclusive statements by him (the bill of complaint above referred to among others), made during the time when the FEDERAL LEAGUE was in operation, and was being subjected to merciless attack, showing that everything he attempted to say upon the stand in defense or justification of ORGANIZED BASEBALL was untrue. The Court will observe (Record, pp. 350 to 388), that whenever he made a statement upon his examination-in-chief, he was, upon cross-examination, driven from one assertion to another, and from both to retraction or contradiction with such

regularity that he was compelled at last in effect to admit that his whole defense of ORGANIZED BASEBALL was a miserable tissue of equivocation and falsehood.

## THE WRECKING OF THE FEDERAL LEAGUE THROUGH A CONSPIRACY BETWEEN ORGANIZED BASEBALL AND THE OWNERS OF CERTAIN OF THE INDIVIDUAL CLUBS OF THE FEDERAL LEAGUE.

### *The Condition of the Federal League in December*, 1915.

The FEDERAL LEAGUE and all of its constituent clubs conducted their business through 1914 and 1915, and completed the schedule of games for each of these seasons. It was realized, of course, when it was formed, that there were many obstacles to overcome, and that it would take some time to establish the League upon a profit-making basis. There is nothing in the testimony in this case to indicate that in the fall of 1915 the League had not done as well as its leading promoters had expected. Subsequent developments seemed to have indicated that the League was much stronger in fact that it was believed to be at the time we are considering, namely, the fall of 1915. This will appear from the testimony of Mr. COMSTOCK, half owner of the Pittsburgh Club, whose part in the wrecking of the FEDERAL LEAGUE will be adverted to in a moment. He appeared voluntarily at the trial as a witness for the defendants in error and attempted to defend his conduct. This is what he said in comparing the financial strength of the FEDERAL LEAGUE, of which his club was a member, with ORGANIZED BASEBALL:

> "Q. I say you were the weaker and younger? A. We were younger, I do not know whether we were weaker.
>
> "Q. That is very interesting, do you think you were the stronger? A. No, sir; I do not.
>
> "Q. Do you think you were as strong? A. It appears now that we might have been as strong.

"Q. Might have been as strong? A. Yes. We did not think so at the time" (Record, p. 393).

It is, of course, true that during 1914 and 1915, owing to the kind of warfare that ORGANIZED BASEBALL was waging upon the FEDERAL LEAGUE, a great deal of money had to be expended in excess of what should have been the normal cost of operation, particularly with respect to the salaries which had to be paid to players, as before pointed out. But there is no evidence in the record that anybody had given this as a reason why the fight should not be carried on or doubted that even in the face of these conditions the League was not a success, or did not give promise of being a very profitable enterprise. So far as the plaintiff in error was concerned, the testimony is overwhelming that it was not only willing but anxious to continue the business of the League, and that it was willing to support it with all necessary financial and other resources. (See testimony of Mr. Hanlon, page 218; of Mr. Goldman, page 119, and of Col. Janney, page 301.)

COLONAL JANNEY says upon this subject:

"That the plaintiff club had made all of its preparations to continue the following year, in so far as they were necessary at that time. They had their team and men under contract, their grounds, and had finished the previous season.

"Witness did not remember whether any plans for needed financing had been consummated or arranged for, but there was nothing so far as they could see that would make any difficulty in this respect. The club had lost money in the last year, but the directors had backed it and expressed willingness to continue to back it." (See testimony of Col. JANNEY, Record, page 301.)

Among the Board of Directors of plaintiff in error were representative business men of Baltimore of large financial resources (Record, p. 78).

About $3,000,000, according to Mr. GILMORE, had been invested in the FEDERAL LEAGUE by the various clubs. Outside of Baltimore there were a number of very wealthy and financially powerful men who were backing the League in the other cities.

Mr. GILMORE, the most active promoter of the FEDERAL LEAGUE, has described the gentlemen whom he induced to invest in the League to the extent of getting them to put in the $3,000,000. Among the first of these were Messrs. Weeghman and Walker, of Chicago. Mr. Weeghman was a man reputed to be very strong financially, who erected in Chicago grandstands which cost about $300,000. Mr. R. B. Ward, of Brooklyn, was another, a very strong man financially, and a very fine man generally. He built a magnificent plant at Washington Park, Brooklyn, seating about 20,000 people, at a cost of approximately $300,000. Still another was Mr. Harry Sinclair, president of the Sinclair Oil Company and of the Sinclair Gulf Company, and a director in many banks (Record, p. 340). He spent about $90,000 in equipping a ball park at Newark, upon property which he had bought, the cost of which is not given. It appears, however, in the PEACE AGREEMENT, that an option was given to ORGANIZED BASEBALL to buy this plant at $200,000.

The general situation with reference to the FEDERAL LEAGUE at the time of the transaction about to be related, is given in Mr. GILMORE's cross-examination, as follows:

> "Q. And you had some pretty strong, courageous men, fine characters and of fine ability, plenty of money to make the Federal League go if you had a fair chance and living opportunity, is not that true?
>
> "The Witness: Read that over again.
>
> "(The stenographer repeated the question.)
>
> "A. We had a fair chance.

"Q. (By Mr. Douglas) You did? A. I think so, yes. We had an equal chance with anybody else.

"Q. An equal chance with organized baseball? A. Absolutely.

"Q. Do you mean that? A. I certainly do."

Nothing could reflect more light upon the actual condition of the FEDERAL LEAGUE and of the plaintiff in error than the testimony of Mr. HANLON, a man of large experience in the management of baseball teams and in the buying and selling of the corporate interests or franchises in baseball clubs. Mr. HANLON states that even considering all of the handicaps to which ORGANIZED BASEBALL had subjected the FEDERAL LEAGUE, he would regard the mere right to be a member of the FEDERAL LEAGUE in Baltimore independent of and separate from the value of its physical properties, and its contracts with its players, as being $75,000 (Record, p. 218).

Mr. HANLON goes on to state that if certain of these obstacles which ORGANIZED BASEBALL had placed in the way of an independent organization had been removed he would regard the FEDERAL LEAGUE franchise which plaintiff in error held as worth $150,000 at least (Record, p. 218).

It also appears that Mr. R. B. WARD, Mr. GILMORE and Mr. SINCLAIR were so well pleased with what the FEDERAL LEAGUE had accomplished up to the Summer of 1915, and had such confidence in its ultimate success, that they had obtained options on real estate in the City of New York and had prepared plans for the erection of a stadium, with a seating capacity of 55,000, and estimated to cost about $480,000 (Record, p. 393). They had not only obtained options on a site of sufficient size in the City of New York, but had plans for the stadium drawn and publicly exhibited in that city and elsewhere and advertised their purpose at large through the newspapers.

It is important to distinguish between the *fact* that these plans were so made and advertised and the *testimony* of Messrs. GILMORE and COMSTOCK given at the trial of this case as witnesses on behalf of their co-conspirators in the wrecking of the FEDERAL LEAGUE, as to the *reason* why these plans were made. They attempted to say four years afterwards that the whole thing was a "huge bluff" for the purpose of holding up ORGANIZED BASEBALL (Record, p. 379), and compelling them to buy out the FEDERAL LEAGUE. But the fact is uncontradicted that the plan to establish a FEDERAL LEAGUE club in New York was formed and made public in 1915. The public announcement of this plan was sanctioned by Mr. R. B. WARD, who is conceded by everybody to have been a man of the highest integrity and honor. Messrs. GILMORE and COMSTOCK attempted to counteract and nullify with the "bluff story" the force of this fact in establishing the confident and vigorous spirit which inspired the FEDERAL LEAGUE in 1915. Mr. ROBERT B. WARD died before the trial of the case and it therefore goes without saying that men who would come upon the stand and admit that they were guilty of a conspiracy to defraud, and that they used a false pretense and bluff to extract money from ORGANIZED BASEBALL (Record, p. 379), cannot be relied upon to tell what was the motive or purpose of a man of the character of R. B. WARD.

In order to show that we do not exaggerate the turpitude which Messrs. GILMORE and COMSTOCK have claimed for themselves, in connection with the proposed entrance of the FEDERAL LEAGUE into New York, we quote the following from their testimony. First, as to Mr. COMSTOCK. He testified as follows:

> "Asked what he did in connection with the matter of the bluff, the witness testified that he succeeded in closing the streets about the proposed grounds in New York, and prepared the plans which were pretty

extensive and were exploited in the newspapers. Believes Mr. Gilmore gave interviews to newspapers as to what was intended, but witness did not. The streets were ordered closed by the Board of Aldermen, but were never closed; had authority to do so. This fact may have been published. Witness gave out an estimate of $480,000 as the cost of building the stadium. *He told newspaper reporters about this, and that they intended to build it. There was not a word of truth in this, and he did it as a hold-up.*

"Asked what moral justification he had for that kind of procedure and whether or not Organized Baseball had treated the Federal League all right before that, the witness answered: 'Well, I imagine there were some things where we might say it was not treating us right, but lots of things where they were.' Asked whether witness had any moral justification for planning and putting into execution a deliberate hold-up like that, he answered: 'Well, I don't suppose we had; at least I don't suppose I had.' " (Record, p. 393.)

Mr. GILMORE testifies on cross-examination:

"Q. Your real purpose was to get organized baseball to buy you out? A. To reimburse us for some of our expenditures, yes, sir.

"Q. To buy you out. Did not they have enough ball parks for the American and National Leagues at that time? A. I presume they did.

"Q. You expected them to buy you out and get rid of your as an annoying competitor; is that the proposition? A. I think so, yes, sir" (Record, p. 379).

These two witnesses, Messrs. GILMORE and COMSTOCK, were called by the defendants in error, having voluntarily appeared without summons. As illuminating their motive in appearing upon the stand, and thus stultifying themselves, it should be mentioned that the testimony

shows that of the total consideration moving to Messrs. GILMORE and COMSTOCK and their associates, under the so-called Peace Agreement of 1915, amounting to about $750,000, about $450,000 remained unpaid at the date when they gave their testimony. We are not left, however, to the testimony of Mr. GILMORE, given in 1919, to ascertain what was his state of mind in the summer and fall of 1915, because we have contemporaneous written statements evidencing what he thought of the condition and prospects of the FEDERAL LEAGUE.

In a letter to Mr. RASIN, president of plaintiff in error, dated October 30th, 1915, GILMORE, then president of the FEDERAL LEAGUE, wrote as follows:

> "Just returned from several days' trip and find your letter of recent date wherein you make another request for a financial statement of the league. I do not intend to give it to anybody because I do not think it is business policy to do so. Any time you are in New York you will be at perfect liberty to look at the books and I will be glad to tell you personally just how things stand.
>
> "I have just refused requests of similar nature from other members of the Board, consequently cannot grant yours. However, I will be glad to tell you that the Kansas City Club have never yet paid their assessment. I hope you will accept this letter in the spirit in which it is sent. *Also hope that your club is signing up some good talent for the coming year. I have wonderful faith in Baltimore as a Major League city, and know if you can get a fighting team there and keep it in the race, you will draw wonderful crowds and easily pay expenses.*" (Record, p. 376.)

On August 15th, 1915, GILMORE telegraphed RASIN:

> "I want your new franchise accepted and sent to headquarters. Advise me when same will be taken care of. Large crowd Newark; popular prices will be a winner."

As indicating that as late as November 21st, 1915, GILMORE had no idea of the FEDERAL LEAGUE's quitting operations, we further refer to his letter of that date addressed to Mr. HARRY GOLDMAN, secretary of plaintiff in error, in which the following paragraph occurs:

> "I also want to suggest that in view of your experience the last year that you make out a statement of the approximate cost to operate your club during the next season. *In other words, I would like an idea of how much cheaper you think you can operate in* 1916 *than you could in* 1915. This will be valuable information for our Board members, and I want you to get it as accurately as possible" (Record, p. 325).

But later still, on November 30, 1915, GILMORE, in forwarding a letter of recommendation of a ballplayer who might be obtained for the *season of* 1916, wrote a memorandum thereon suggesting to RASIN that he investigate the qualifications of this player (Record, p. 326).

The testimony therefore abundantly shows that in the fall of 1915 the FEDERAL LEAGUE was regarded by those in the best position to know as a promising enterprise and one which they could support with reasonable hope of ultimate success.

*The Tentative Peace Agreement.*

On the 16th of December, 1915, Mr. RASIN, the president of the plaintiff in error, received the following telegram from JAMES A. GILMORE (Record, p. 301):

> "You and Hanlon be at Biltmore in morning. Important."

In response to this telegram, Messrs. RASIN, JANNEY and HANLON, three of the directors of plaintiff in error, took the midnight train on December 16th for New York.

When they left Baltimore they had no idea of the purpose of GILMORE's telegram. In the morning on December 17th, upon arriving at the Biltmore, Messrs JANNEY and RASIN had a talk with GILMORE, the effect of which is very clearly related in the following testimony of Col. JANNEY:

"Q. You have spoken of an agreement which was entered into the latter part of 1915 whereby certain of the clubs in the Federal League of Professional Baseball Clubs had agreed to cease doing business. Will you tell us what knowledge you have of that agreement? A. *The first knowledge I had that such an agreement had been made was about December* 17, 1915.

"Asked how that knowledge had come to him and to explain all the circumstances regarding it, the witness answered that on the day before Mr. Rasin, president of the Baltimore Club, received a telegram from Mr. Gilmore stating, '*You and Hanlon be at Biltmore in the morning. Important,*' and Rasin asked witness to go with him; that witness and Rasin arrived in New York on the morning of December 17th, went to the Biltmore Hotel, where they met Mr. Gilmore, president of the Federal League of Professional Baseball Clubs; that they went to Gilmore's room and Gilmore stated to them that the *Federal League proposition for* 1916 *was 'all off';* that he and certain others of the Federal League had had a meeting with certain representatives of the American and National Leagues and had accepted their terms and they were not going to play in 1916. Witness and Rasin asked what had influenced them to do this, and he made no definite reply to that, as witness recalls. We asked what settlement had been reached—*what arrangements had been made, and Gilmore stated he could not tell them at that time, but would see if he could not tell them later.* They asked Gilmore if he appreciated that the settlement effected was vital to the Baltimore Club, and he said he knew that *and that the Baltimore Club would be taken care of;* that they

asked him, 'Well, what arrangements were made to take care of it?' and Gilmore said no arrangements were made at that time, but it would be taken care of and that they had better talk to him later to 'see if he could not tell us definitely the terms.' Subsequently Gilmore told Rasin, witness and Hanlon to come to his room, that he could tell them what the situation was more definitely, that when they got to the room several others who had been identified with the Federal League were present, including Mr. Weeghman, Mr. Sinclair and Mr. Ward, son of R. B. Ward; that when we came in Mr. Gilmore stated again that the Federal League would not continue in 1916 and asked us what we thought had better be done about it; *that witness protested very earnestly against what appeared to be a deal made by certain members of the Federal League with the American and National Leagues, the result of which was to leave the plaintiff club without anyone to play ball with and put them out of business.* The answers given by one or two in a rather confused way were to the effect that it *had been rather sudden and unexpected;* that the way it worked out nobody was there to represent Baltimore and therefore could not arrange anything for Baltimore. Mr. Gilmore stated he had no authority to act for Baltimore and that nothing had been done, but that the others present were satisfied and they did not propose to continue the following year; that he had no doubt, however, that Baltimore could get a good settlement with the National Commission and that it was understood that Baltimore *would have claims under these circumstances which would receive consideration, and he urged them to accept the situation philosophically.* The conference which ensued *grew rather bitter,* and Mr. Sinclair came forward as representing those who had dealt, and I am afraid *his words and mine were not always of the smoothest, quite a dispute arose.* Witness told Sinclair and the others that there was only one way to make a settlement when there were clubs composing a league like partners and that any settlement would have to be made by them, and that any settlement that was to be

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effected had to be for the benefit of all, and Sinclair said that would be true. Witness even sketched on a piece of paper a suggestion that if money was to be obtained by the Federal League in any settlement effected it should be equally divided between the various clubs, and witness read this to those who were present, but Sinclair said he would have none of that; that upon being pressed it was disclosed that what the others were respectively to receive was as stated in the agreement; that the Wards were to get $400,000 in installments and several other clubs $50,000 apiece and facilities for buying into the National League. That the conference, after this was disclosed, broke up and we went down to consult together, those of us who were there, to see what could be done in view of the situation. Gilmore and Sinclair are parties to the pending suit.

"Q. Now, in this discussion in the room there, which you have just referred to, you said it was stated by someone that Baltimore had claims that would have to be considered. What was the nature of the claims which were in contemplation at that time? A. Well, there was nothing said further than that at the time. I can imagine what he had in mind. Of course, *the result of the agreement was to put the Baltimore Club out of business, and it was manifest they had some claims.*

"Q. To wipe out the entire value of its assets? A. Unquestionably, and it would be worse than that, *because the players which it had accumulated at a large expense would not only be not an asset but a liability,* because we would have to pay them salaries.

* * * * * * *

"Asked if prior to his conference in *New York on the morning of December 17th the question of the winding up of the Federal League was ever brought before the Board of Directors, or at any meeting of the stockholders of the plaintiff club, witness answered, 'No. No one ever knew anything of it, I never knew anything of it.' That when Mr. Rasin received the telegram on December 16th from*

*Gilmore they did not know what the subject of the meeting in New York was to be.* Asked if Gilmore or Sinclair told him that the agreement which was mentioned by Gilmore had been consummated, witness answered: '*He told me it was done, that they had agreed to quit and that it was final; that was reiterated to me* and Mr. Weeghman and Mr. Ward confirmed it right there.' Witness *was told the agreement had been consummated a few days before the 16th of December;* that Gilmore told witness there were a lot of details to be fixed up and that Baltimore could doubtless be taken up as a part of that, '*and we said we did not want to be taken in as a part of the details, that we had been put in this situation by their action, and that this is where the bitterness came in.*' Witness was told by Gilmore that Brooklyn, Chicago and Newark had all agreed upon the terms (referring to memorandum) and Pittsburgh. Mr. Sinclair said that no provision was made for Newark, but nevertheless he had agreed to terms and he made a great protestation about not knowing how he would come out. That Newark was not named in the agreement, but Sinclair was named as one of the parties to it—he owned the Newark Club—but witness does not know whether he was president or not. Sinclair is stated in the Peace Agreement to be a part purchaser of the Chicago Club. Later in the day on the 17th, during the afternoon some time, witness saw Mr. Herrmann, president of the National Commission, at the Waldorf, and witness told him the Baltimore Club was in a very unfortunate situation, and *that they had been put out of business by this agreement*—and Mr. Herrmann stated he realized that, but that the Baltimore Club's rights would be taken up and dealt with in a fair way by the National Commission; that witness *told him they wanted to continue in business;* that a large portion of the Baltimore people desire to have a first-class baseball club in Baltimore in competition with other cities of its own size, and that it was a public question there—and asked what arrangements could be effected to have that consummated and whether or not in the general adjustment

> Baltimore should not be given a team of proper calibre to represent it; that Herrmann stated it might be consummated and he would consider it and that he had in mind the possibility of the St. Louis National League franchise being transferred to Baltimore, but that that was a matter that the gentlemen of the respective Leagues would have to determine and this might be taken up at a later meeting; *that it was assumed in this conversation with Herrmann that the agreement was a consummated fact.* * * *"
> (Record, pp. 301-304.)

Mr. RASIN gives exactly the same account of what occurred in New York (Record, pp. 200 and 201).

The information that the FEDERAL LEAGUE had been "sold out" to ORGANIZED BASEBALL by Messrs. GILMORE, SINCLAIR and WEEGHMAN came as a bolt from the clear sky to the officers of the plaintiff in error club. They were amazed to learn that these gentlemen had made an agreement with ORGANIZED BASEBALL by which certain of the clubs in the FEDERAL LEAGUE were to be paid a stipulated price to desert that League and to leave the other clubs therein without a circuit or a League; that is, without anybody with whom they could carry on their ordinary operations as a professional baseball club.

The testimony is uncontradicated that prior to the morning of December 17th neither the plaintiff in error nor any of its officers, had ever heard a suggestion from any officer or person interested in the League, that the FEDERAL LEAGUE was to be wrecked and dismantled. At no corporate meeting of the plaintiff in error prior to December 17 was any such proposition mentioned or suggested. The first meeting of either its directors or the stockholders at which the fact was mentioned that such an agreement had been made was a stockholders' meeting held on January 27th, 1916, at which a report of the president was read, giving such facts as he had heard

with reference to the Peace Agreement. Upon this report the stockholders adopted a resolution authorizing the directors of the corporation to "*take any and all steps in their discretion, to protect the interests of the stockholders of this corporation, by litigation in such form as they deem advisable, or in any other manner.*" The report of the president is set out at length in the Record on pages 320, *et seq.*

The witnesses GILMORE, COMSTOCK and WARD, testifying as we have said for defendants in error, said a good deal in their testimony about a meeting of the officers of the FEDERAL LEAGUE at the Biltmore Hotel on the morning of December 17th. They attempted to make it appear that at this meeting the plaintiff in error was represented by Mr. RASIN, its *president*, and that all the other clubs were represented by someone authorized to speak and act on their behalf. They attempted to show that at this supposed meeting a committee was appointed at the instance of Mr. RASIN, to act for all of the clubs in the FEDERAL LEAGUE, in the matter of carrying out and perfecting the tentative agreement between ORGANIZED BASEBALL and GILMORE and his confederates, dated December 13th, 1915, that is, the agreement which COL. JANNEY says had been entered into before he and Mr. RASIN and Mr. HANLON reached New York, and under the terms of which the destruction of the FEDERAL LEAGUE had already been consummated. Mr. RASIN, Mr. HANLON and COL. JANNEY deny that any such meeting was ever held. Mr. RASIN denies that he ever suggested the appointment of any committee to act for the FEDERAL LEAGUE in any peace negotiation (Record, pp. 202-203).

The improbability of any such action on the part of Mr. RASIN is of course apparent upon the very face of the testimony of Messrs. GILMORE, WARD and COMSTOCK. When Messrs. RASIN, JANNEY and HANLON learned of the

perfidy of Mr. GILMORE and his associates they openly charged them with being traitors and denounced them in the most vigorous terms. It is admitted by everybody that the Baltimore Club (plaintiff in error) was not mentioned in the tentative agreement of which the gentlemen from Baltimore were informed when they reached New York, and it is of course preposterous to assume that Mr. RASIN or COL. JANNEY or Mr. HANLON ever took any part in attempting to execute an agreement which was for the benefit alone of those whom they instantly and indignantly denounced for having made it.

The very description of this so-called meeting of the Board of Managers of the FEDERAL LEAGUE, as given by GILMORE (Record, p. 342), is sufficient to show that the idea that any formal meeting was then held is one fabricated by GILMORE and his associates, after the exigencies of this case required them to make some show of justifying that course of action. We call attention to but one of the indicia of falsehood in connection with this alleged meeting. GILMORE pretended upon the witness stand that he assumed at the time of this alleged meeting at the Biltmore on the 17th of December, that the Board of Managers of the FEDERAL LEAGUE, which was made up of a representative of each of the constituent clubs in the League, had the power to enter into an arrangement entirely to destroy the business in which they were engaged without even mentioning such a matter to the directors or stockholders of the corporations that operated those constituent clubs. But GILMORE's testimony (Record, p. 342) shows that even the members of the Board of Managers of the FEDERAL LEAGUE were not present at the time in question. The only claim is that these managers by telephone and otherwise authorized GILMORE and his associates to represent them at the alleged meeting. Of course no one could believe for a moment that GILMORE or anybody else supposed that a committee such as the

Board of Managers, which only had authority with respect to certain specified matters regarding the internal business of the League as an active, going institution, would have the power to destroy and dissolve not only the League, but every member of it, and the utter hollowness of this pretence that he did believe such a thing is but emphasized by the fact which he of course knew at the time of the alleged meeting of the Board of Managers, that it was not even a meeting of that Board.

*Meeting at the Waldorf on the Evening of December* 17, 1915.

Counsel for defendants in error in their brief in this case in the Court of Appeals laid great stress upon the presence of Mr. RASIN and COL. JANNEY at a meeting at the Hotel Waldorf, held on the evening of December 17th, 1915, after the occurrences before related. This was a meeting of the members of the NATIONAL COMMISSION and the presidents of the various clubs in the National and American Leagues, together with Messrs. GILMORE, SINCLAIR and WEEGHMAN, for the purpose of discussing the tentative peace agreement which had been entered into on the 13th between them and which had been discussed by committees of the American and National Leagues, held in the afternoon (Record, p. 416).

The contention of counsel for defendants in error in the Court below, as we understand it, is that the presence of Mr. RASIN and COLONEL JANNEY at this evening meeting at the Waldorf Hotel is sufficient in itself to defeat any right of recovery in this case upon the ground that such presence removes from the transaction which led up to the Peace Agreement any element of conspiracy. The mere fact, counsel say, that Mr. RASIN and COLONEL JANNEY were at this meeting, or at some part of it, makes the plaintiff in error a party to the tentative agree-

ment of December 13th and to the negotiations with respect to it on the evening of the 17th and to the execution of the final Peace Agreement on December 22nd without regard to what Mr. RASIN and COLONEL JANNEY did at that meeting, who they represented, or any prior authority from the plaintiff in error to act for it at such meeting, or any knowledge on its part that such a meeting was to be held, or of the nature and character of the business to be transacted.

We are at this time concerned only with the statement of the facts of the case and not with the argument of any legal proposition. We merely call attention to the contention of defendants in error for the purpose of emphasizing particularly at this point the facts surrounding the meeting at the Waldorf on the evening of the 17th and the presence of Mr. RASIN and COLONEL JANNEY thereat. When these facts are understood, it will be clear that the only effect of the meeting and the presence there of Mr. RASIN and COLONEL JANNEY is to emphasize the enormity of the wrong which defendants in error were engaged in perpetrating and the desperation to which the undisputed facts of this case have driven them in seeking to make some show of defense to this action. In the first place, the uncontradicted evidence shows, as we have before pointed out, that none of the gentlemen from Baltimore who were present in New York on December 17th, namely, Messrs. RASIN and HANLON and COLONEL JANNEY, had ever heard of a Peace Agreement or that any such thing was in contemplation until they reached New York on the morning of the 17th and found that the destruction of the FEDERAL LEAGUE *was an accomplished fact.* In the language of all the witnesses, they understood, after their interview with Mr. GILMORE, that the wrecking of the FEDERAL LEAGUE had been consummated by the agreement of December 13th. GILMORE'S testimony upon this is clear and explicit, as is that of all the other witnesses:

"Q. Did you ever have a meeting of the Federal League Clubs of Professional Baseball, ever formally or informally, called for the purpose of discussing seriously the dissolving of the Federal League? A. We did not.

"Q. The only notice you ever gave Rasin was the telegram in which you asked him to come to New York on the midnight train on important business? A. The same telegram that I sent to all the other members.

"Q. He did not know what you were bringing him there for, did he? A. No, sir," (Record, p. 382.)

The uncontradicted evidence also shows that the question of making peace with ORGANIZED BASEBALL or selling any of the assets of the FEDERAL LEAGUE, or of any of its constituent members, was never discussed at any meeting of the Board of Directors, Stockholders or Executive Committee of the plaintiff in error. Further, the evidence is uncontradicted that no one was ever given authority to discuss any such question or questions by the plaintiff in error (which is a corporation), its Board or Directors, Stockholders or Executive Committee with anybody; that no one ever purported to have any such authority and that no one ever supposed or presumed that any such authority had been given. The facts are, as above intimated, that the tentative Peace Agreement of December 13th did not purport to bind the plaintiff in error; it was not mentioned in that agreement. Certain parts of the minutes of the meeting at the Waldorf Hotel on the evening of the 17th of December were offered in evidence and they plainly and distinctly show that it was announced there several times that plaintiff in error was not a party to the tentative agreement and that its rights and interests were not the subject of consideration at that meeting.

But further than this the testimony offered by defe
ants in error themselves shows that before the Pe
Agreement was executed on December 22nd plaintiff
error was protesting against the making of that agr
ment. Not a dollar had been paid nor an act done
any of the parties to the tentative agreement prior
January 18, 1916, and it was not possible even if it h
been baselessly imagined that plaintiff in error had be
represented in the prior negotiations that anyone co
have been harmed or mislead in any way to their inju
before the signing of the actual agreement of Decemb
22nd. The fact is that with the knowledge of the rep
sentatives of ORGANIZED BASEBALL, Mr. GILMORE, duri
the meeting at Cincinnati on December 22, before t
Peace Agreement was signed, called up by long-distan
telephone Mr. RASIN at Baltimore from Cincinnati a
made an offer to plaintiff in error of $75,000 in sett
ment of its claims, which was declined. After this, a
in view of its refusal to enter into the Peace Agreemer
a provision was incorporated therein expressly decla
ing that "the parties hereto on the date hereof have n
arrived at an understanding of the rights and interests
of plaintiff in error (Record, p. 172). In this connecti
it is very important to consider the testimony of GILMO
as given in this case (Record, p. 385):

> "Q. There was no contention there at that mee
> ing as I understand it, Mr. Gilmore, that anybo
> was present with authority to act for the Baltimo
> Club; the committee had only authority to act f
> the Federal League in accordance with the so-calle
> meeting held at the Biltmore. A. We considere
> Mr. Rasin as the member from Baltimore who ha
> full authority.
>
> "Q. Did you consider at that time that Mr. Rasi
> had authority to act for the Baltimore Club in mal
> ing any statement that might be made? A. He ha
> always acted for the Baltimore Club at previou
> meeting.

"Q. You mean at this meeting at the Waldorf? A. At every meeting we ever had.

"Q. Did Mr. Rasin ever represent at the meeting at the Waldorf that he had authority to act for the Baltimore Club in making that sstatement? A. I never asked him the question.

"Q. And he never said so, did he? A. I never asked him the question.

"Q. *And he never said so?* A. *No.*

"Q. Did anybody say that anybody had authority to act for Baltimore there, for the Baltimore Club? A. I don't believe they did.

"Q. They did not? A. No.

"Q. You are only claiming you could do what you could do for Federal League? A. I am only claiming that the board of managers had authority to do whatever they deemed advisable and best." (Record, p. 349).

"The Witness was asked what, if anything, was done subquent to this meeting on December 17, 1915, by the committee of three which he then appointed, consisting of witness, Mr. Weeghman and Mr. Sinclair, and he replied that a meeting was called to meet the National Commission in Cincinnati on December 21 or 22, at which meeting there was a lenghty discussion as to what should be done and how the agreement should be finally concluded. *The tentative agreement only covered the Chicago, Brooklyn and Pittsburgh situations, and others were taken up one by one. Discussed the Buffalo situation thoroughly and also the matter of Baltimore's buying the International League franchise. Baltimore was not represented, and witness phoned Rasin to ask if they would take* $75,000, *and Rasin said 'No.'* Sinclair suggested that the Buffalo and Baltimore situations be left open to be settled by a committee of seven, to be composed of the National Commission, Barrows of the International League, Gilmore and one

member each from Buffalo and Baltimore, who were to meet at a later date and try to make adjustment. This was embodied in the seventh section of the peace treaty. Witness thought $75,000 should satisfy the Baltimore Club, in view of the Federal League's financial condition and inability ever to operate again. It was more than Pittsburgh was to receive. *The telephone conversation with Rasin preceded the actual signing of the peace agreement.* Witness did not have any authority to make the offer, but felt that Organized Baseball was showing sincerity in their negotiations. Believes Dunn, who was there, offered $50,000 for the Baltimore Park, and witness felt he could arrange for immediate payment of the $75,000 to settle the Baltimore matter. *But the effort at adjustment failed, and the peace agreement was signed by witness as president of the Federal League, and received the assent of the Federal League committee of three.* The matter of a payment to Baltimore was taken up for discussion in the Cincinnati meeting, and everybody was present. There was a later meeting in the early part of January, about the 4th or 5th, and whether any definite amount to be paid Baltimore was then discussed witness does not recall. Janney was in Cincinnati at the time, and refused to attend the meeting, 'and therefore we were unable to accomplish anything.' "

On December 24th, two days after the signing of the Peace Agreement over the protest of plaintiff in error and in which it was provided that its rights should be left for future settlement, GILMORE wrote JANNEY as follows (Record, p. 308):

"I can say for Mr. Sinclair and myself that fair treatment will be given by the members of the National Commission. Mr. Dunn was given an audience and it was the opinion of all the members of the National Commission that his demands were absolutely unreasonable. I am going to try to have this meeting held in New York the first week in January, so suggest that your Board of Directors *delegate someone*

*with full authority to close the matter.* Mr. Sinclair and myself argued for hours in an effort to give you the kind of a settlement you said you were willing to take, but we could not make Mr. Dunn agree with us, consequently we came to the conclusions as above stated, and you need have no fear about *the Baltimore Club receiving fair treatment.*"

And on January 3rd GILMORE telegraphed RASIN (Record, p. 309):

"Committee to adjust Baltimore affairs meets Cincinnati Sinton Hotel noon January 5th. Be sure and have authorized representative present. Answer"

If the Court will review the correspondence set out in the Record from pages 307 to 317, it will see that Mr. RASIN and COLONEL JANNEY exercised the greatest care in giving notice to the parties to the Peace Agreement that appellee would not be bound by that agreement, and denouncing most vigorously the act of the parties thereto for attempting the destruction of the FEDERAL LEAGUE and the consequent destruction of the business of the plaintiff in error. All of this correspondence ensued before a dollar was paid in pursuance of the Peace Agreement or before any act was done thereunder. We quote a few extracts from this correspondence.

In a letter dated December 23rd, 1915, from RASIN to GILMORE he says (Record, pp. 307 and 308):

"Of course, it has not escaped your attention that a very serious litigation is pending in Chicago before Judge Landis, which must be determined or disposed of before it would be possible for any member of the Federal League to join that organization under attack, *unless the fundamental agreements on which the organization is founded be materially changed, and for any members of the Federal League to join*

*organized baseball would, if conditions are not changed, be a serious emphasis upon the monopolistic character of the organization,* particularly true if this involved the aband-ment of the other members of the Federal League and the destruction of the property values dependent upon the organization as a whole.

"Under the above circumstances, I shall be obliged if you will communicate immediately the result of your conference in Cincinnati, *so that we may understand our position and know the details of the new organization.*"

In a letter to GILMORE, dated December 28th, 1915, signed and dictated by COLONEL JANNEY, the following appears (Record, p. 310):

"Mr. Rasin has handed me your letter of December 24th, advising that you have signed what you call a 'Peace Pact.'

"Of course, you realize that any terms agreed upon on behalf of any of the Federal League clubs or of the owners vitally affect the Baltimore Club, which is entitled to know exactly what has been done so as to judge what position it should take. The Baltimore Club therefore requests you to send this information immediately.

"With respect to the conference you suggest, the Baltimore Club will be glad to send a fully authorized representative to New York to discuss the situation with the others you mention, but will not of course submit its rights to the binding decision of a committee or of the majority of a committee, in which its representation is only a minority. It is important for us to know very promptly whether under these circumstances we should wait any further invitation to discuss matters *or whether we should proceed independently to protect our interests.* We will thank you, therefore, to advise us fully on receipt of this."

In a letter dated January 3rd, addressed to AUGUST HERRMANN, Chairman of the NATIONAL COMMISSION, signed in the firm name of RITCHIE, JANNEY & GRISWOLD, of which COLONEL JANNEY was a member, the following appears:

"The Baltimore Company referred to above has further informed us that they were not a party to this so-called peace agreement, nor are they acquainted with its terms, although, as you are aware, they are familiar with the fact that *an effort* was being made by some parties to bring about an agreement that would be satisfactory to all *and in accordance with the law*, for which purpose a meeting was held in New York, at which you were present and at which the Baltimore Club was represented.

"The Baltimore Club informs us that although they are credibly advised that this agreement has been actually signed, there have been *no proposals submitted to them for approval*, nor have they been taken into the confidence of those engaged in these negotiations. As their financial interest in the continuance of the Federal League is very large and as this financial interest will be gravely and seriously imperiled by the purchase of the defection of some of the constituent members of the Federal League by the interests represented by your Commission, we have advised the Baltimore Club *that they may properly hold the parties to the peace agreement and those represented by the delegates and your commission responsible for what damage may be occasioned them by the elimination of this competition in the way indicated above, and they have requested us to acquaint you with our conclusion in this regard.*

"The officers of the Baltimore Club have been informally advised and the press has carried reports to the same effect, that a conference will shortly be called, in which the Baltimore interests will be invited to participate, for the purpose of working out some satisfactory adjustment of the present situation, which is of course disturbing to them. The Baltimore Club, under our advice, will gladly participate in such a conference, but it is of course nec-

> essary that this should be promptly held, as the representatives of the club are obliged to safeguard the rights of its stockholders and would dislike, in the performance of this obligation to take any stand which might be entirely unnecessary on account of the intention of your Commission and those represented by it to make a satisfactory adjustment of this condition." (Record, p. 311).

We repeat that all of the above letters were written before any payment was made or anything was actually done to carry into effect the terms of the Peace Agreement signed December 22nd, 1915.

Counsel for defendants in error reiterated the statement several times in his brief in the Court of Appeals that defendants in error were misled into believing by the presence of Mr. RASIN and COL. JANNEY at the Waldorf meeting that plaintiff in error was perfectly satisfied with the tentative agreement. This statement was made although it appears, as has just been seen from all the evidence, that plaintiff in error was not mentioned in that agreement, and in the face of the uncontradicted facts which show conclusively that defendants in error were informed in the most positive way before the Agreement of December 22 was executed and before anything was done under it, that plaintiff in error protested against it and would not be bound by it.

In order that no injustice may be done to counsel, and further to emphasize how diametrically opposed to the statements made by them in their brief below is the testimony in the case, we quote two paragraphs therefrom:

> "At the time the peace agreement was signed the members of the National Commission acting for the Major leagues had no reason to supose that negotiations for the adjustment of the rights of Baltimore's Club were proceeding otherwise than satis-

factory. It was not until a meeting between the National Commission and the Federal League Committee on or about January 5, 1916, that the Commission learned that the Baltimore people were not satisfied. Janney declined to serve on the committee to be appointed under paragraph seven and the committee was accordingly never enabled to act (Record, p. 418).

"Upon the basis of the facts above summarized, it is contended on the part of the appellants that if the *execution and performance* of the peace agreement of December 22, 1915, caused damage to the Baltimore Club it was not merely a damage which the defendant never intended to inflict, *but resulted from a step which the defendant was induced to take by the representations and conduct of the president and attorney of appellee*" (Italics ours).

We shall submit to the Court the question of whether from the undisputed testimony above quoted from the Record, the NATIONAL COMMISSION did or did not have reason "to suppose that negotiations for the adjustment of the rights of the Baltimore Club were proceeding otherwise than satisfactory," assuming for the moment that what the NATIONAL COMMISSION *supposed* or did not *suppose* upon that question is relevant to the issues in this case. We further shall submit to the Court in view of the uncontradicted testimony above quoted from the Record whether there is any basis for the contention made by counsel that "if the *execution and performance* of the Peace Agreement of December 22, 1915, caused damage to the Baltimore Club, it was not merely damage which the defendant never intended to inflict, but resulted from a step which *the defendant was induced to take by the representations and conduct of the president and attorney of the appellee.*"

Even if there were struck from the case all the evidence as to what was done by Mr. RASIN and COL. JANNEY at the

Waldorf meeting, from which it appears that there is not a shadow of substance to the assertion that anyone was or could have been misled into believing that plaintiff in error approved of the Agreement there under discussion, and even if there were struck from the case all the testimony and correspondence down to January 5, the date named by their counsel showing clearly and positively that defendants in error were throughout that time informed of the unqualified opposition of plaintiff in error to the making of that agreement; there nevertheless remains in this Record testimony which shows indisputably that appellants were not misled by anything done by Mr. RASIN or COL. JANNEY at the Waldorf meeting.

Mr. HERRMANN testified that prior to *January* 11, 1916, the press reported that plaintiff in error had filed a complaint with the United States Attorney-General "*on the ground that what Organized Baseball was doing was in violation of the Sherman Law.*" On January 11th, Assistant Attorney-General Todd, according to Mr. HERRMANN, held that it was not in violation of the Sherman Law *and they went ahead with the details of the Peace Agreement*" (Record, p. 436).

Thus it positively appears from the testimony of the Chairman of the NATIONAL COMMISSION that the Peace Agreement was held in abeyance to await the determination of the question of its legality by the Assistant Attorney-General, and it was not until after that time that defendants in error "went ahead with the details." It is only necessary here to say that not a dollar was paid under the agreement or any act done in pursuance thereof until January 18, when $50,000 was paid to Mr. WEEGHMAN. Of course it is not necessary to say anything with reference to the correctness of Mr. HERRMANN's version of what the Assistant Attorney-General decided. We refer to his testimony because of its conclusiveness in

showing even if everything else is disregarded and ignored that before anything was done under the *Peace Agreement* the appellants knew that appellee was not only opposed to that agreement, but has carried its opposition to the point of bringing the matter to the notice of the Attorney-General's office.

We have been thus careful to make perfectly plain the facts with respect to the attitude of plaintiff in error toward the destruction of the FEDERAL LEAGUE, for the reason that although it is obvious, no one had or could possibly have had *any authority from the plaintiff in error* to enter into any agreement for the destruction of its entire business, or to negotiate for such a purpose, and consequently it could not be bound by anything that was done there by MESSRS. RASIN and HANLON and COLONEL JANNEY or any of them in New York yet entirely aside from this conclusive aspect of the matter, the facts is that absolutely nothing *was* done by the gentlemen mentioned or any one of them which could or which did as a matter of fact mislead any of the parties to the Peace Agreement, or affect in the slightest degree their previously determined course in respect to that agreement.

The parties to the Peace Agreement had decided as early as December 13, at least, to wreck the Federal League. They ignored Baltimore intentionally at the beginning, and continued to do so until the end. They had conspired with a sufficient number of the clubs in the FEDERAL LEAGUE to wreck that League, and they knew that plaintiff in error was then helpless and did not have to be taken into account in perfecting the conspiracy. The contention that anything that MESSRS. RASIN or HANLON, or COLONEL JANNEY did in New York on December 17th, had the slightest effect upon what was then the settled determination of the parties thereto to make the Peace Agreement and wreck the FEDERAL LEAGUE, is simply in defiance of all the testimony and all the facts in the case.

Both Mr. RASIN and COL. JANNEY explain clearly how they happened to be present at the meeting at the Waldorf on the evening of December 17th. Mr. RASIN denies that he was ever invited there and says that having been told of the betrayal by GILMORE of the FEDERAL LEAGUE, he obtruded himself into the party that he understood was going down from the Biltmore to the Waldorf Hotel to further discuss the matter, and that he did this for the purpose of learning as much as he could about what was going on. In other words, he had a very natural curiosity and interest in learning all the details of the conspiracy. Having been informed, as was the fact, that plaintiff in error was not mentioned in the agreement which had already been tentatively made, it is perfectly natural that it never dawned upon him that anybody could suppose that his presence at the meeting was for the purpose of binding it to that agreement. It is true that after Mr. RASIN and COL. JANNEY had been informed that the destruction of the FEDERAL LEAGUE was an accomplished fact, owing to the desertion of several of its clubs, that it occurred to them to see what could be done with respect to providing the City of Baltimore with major league baseball in some other way.

It is to be remembered that both COL. JANNEY and Mr. RASIN went into the FEDERAL LEAGUE largely on account of their interest in professional baseball as a sport and that they had to a greater or less extent represented the City of Baltimore in trying to provide baseball of the highest type for its people. Naturally enough, when they were suddenly informed that the organization which had provided this character of baseball for two years had been destroyed through a conspiracy between ORGANIZED BASEBALL and certain club owners in the FEDERAL LEAGUE, the public aspect of the situation was uppermost in their minds. They, immediately upon learning from GILMORE of the destruction of the FEDERAL LEAGUE, denounced his conduct and that of his associates most vigorously. Any

possibility, however, of thwarting the dismantling of the FEDERAL LEAGUE was entirely gone. The League had been destroyed on the 13th of December, four days before they reached New York. Mr. RASIN and COLONEL JANNEY were told that it was an accomplished fact. The assets of the plaintiff in error became as a result of that accomplished fact, a liability; it was a bankrupt organization. Whatever remedies it might have in this situation had accrued already and could not be affected by anything that any officer or individual member of that corporation could do thereafter. When, therefore, COL. JANNEY appeared at the meeting at the Waldorf on the evening of December 17th, at the suggestion of Mr. RASIN, he

> "was a little at a loss to know exactly what line to take, as he had not been present at the previous part of the meeting, but made a statement to the meeting endeavoring to set forth Baltimore's rights in the very public question of baseball, showing the size of the city and its rights to be considered as having a right to representation in any League that was to operate in the big cities of the country, but this suggestion was received with ridicule and nothing was or could be evidently accomplished in that direction." (Record, p. 305).

COL. JANNEY told with perfect frankness upon the stand exactly what his purpose was in going to the meeting in question and nothing could more completely dissipate any suggestion that anyone could have been misled by what he said or did at the meeting, then his own statement as to what occurred there, as related in the folliwing extract of his testimony:

> "Q. *Did you say to anyone there you had authority to represent the Baltimore Club for any such purpose?* A. *No, and I did not make any statement about that at all. I simply went into the room, and Mr. Herrmann stated that a representative of Baltimore was there to make a statement, and I was*

*pushed forward and I started off on this statement.* Asked for what purpose he went to meeting at the Waldorf and in what capacity, witness answered, 'I should think that would be rather a question of law. I don't know myself. *I was there personally interested in having what I considered Major League baseball in Baltimore.* I was also of counsel for the Baltimore Federal League Club, and I wanted to get a settlement offered to make good the situation for the Federal League Club, which I could bring back to the Baltimore League Club *and present to the corporation.* I also wanted to get for the citizens of Baltimore the character and style of baseball, in competition with cities that it would be a matter of pride for them to compete with. It was under those circumstances that I went there urging the claim of Baltimore. In a sense, I had represented the Federal League Club, and, of course, *I was open to receive any suggestion that might come for settlement of the Federal Baseball Club of Baltimore's claims, and I had in mind doubtless that there might be some adjustment if a new franchise was granted in a reconstituted League properly formed, which would enable me or enable anyone who took it up to arrange with the stockholders of the Federal League Club to participate in;* but these events were piling upon themselves so rapidly that naturally I did not have any exact plan mapped out nor did I know what was going to occur when I went in there. That by stockholders he meant the stockholders of the plaintiff club. *That prior to going to New York on December 17th, the matter of taking a franchise in either the American or National League had never been before any meeting of the board of directors or of the stockholders of the plaintiff club, and that when he went to New York he did not have any authority from said club to make the proposition that it would settle whatever claims it might have growing out of the destruction of the Federal League for any such consideration, as the plaintiff club did not have any meeting of its stockholders or directors to take any action; it could not possibly have had a meeting on this matter, because it had only come up*

*on the 17th of December, and the whole matter was concluded on the same day, and at no time prior to that had any such matter ever been discussed at any meeting of the plaintiff corporation.''*

Mr. RASIN is equally clear and frank in his statement as to what was done at this meeting and his purpose in going there. He testified (Record, p. 204):

"Witness was asked if in stating that associates had quit and left Baltimore in the lurch *he meant that cities of Newark, Pittsburgh and Brooklyn had quit and left Baltimore in the lurch, and he replied that he meant that owners of the clubs had made peace and sold out to Organized Baseball and left the Baltimore Club in the lurch.* That in order to escape from the position in which they found themselves it was their desire to get a major league franchise, *but not for the Baltimore Federal League Club.* That club was in *no position to purchase a franchise. Baltimore Club was on sound financial basis—that is, if they had continued. Witness had no authority to offer to purchase franchise for Baltimore Federal League.* He was president of the club. *Went over to see what he could save from the wreck and to try to get a proposition to see 'if we could not take care of our stockholders in some manner.' What he was doing on the franchise end was not really for the benefit of the stockholders.* As to major league franchise, possibly had in mind that if they did secure it they could take care of some of the stockholders, in some way meant that it *could be worked out in some way.* Would have treated all stockholders alike. *Was not seeking to save anything in the way of a franchise from the wreck for the benefit of the Baltimore stockholders.* Baltimore Club was in no position at that time to pay three to five hundred thousand dollars for a franchise. *Knew he could finance it with others and probably had in mind 'that if I could secure it we could take care of the stockholders in some way.'*"

The Minute Books of the meetings of the Stockholders and Board of Directors of plaintiff in error were offered in evidence and it appeared therefrom that the first meeting either of its Stockholders or Board of Directors after the tentative agreement of December 13th was held on the 27th of January, 1916, about a month and a half after the tentative agreement had been entered into. No meeting of the Stockholders, Board of Directors, or of the Executive Committee had been held between November 23rd, 1915, and the meeting of the Stockholders just mentioned of January 27th, 1916.

An executive committee was authorized at a meeting of the Board of Directors on October 20th, 1915, but only met once, namely, on November 23rd, 1915 (Record, p. 306), to discuss a matter of finance, which was some time prior to the tentative agreement of December 13th (Record, p. 213).

Nine of the eighteen directors of the corporation took the stand in this case and swore that they had never heard any discussion with reference to any negotiations whatever with ORGANIZED BASEBALL for the sale or transfer of the business of the FEDERAL LEAGUE or any of its constituent clubs. The undisputed testimony is that no such question at any time was ever discussed prior to the meeting of January 27th, 1916, when the resolution was adopted, authorizing steps to be taken to redress the injury sustained by plaintiff in error as a result of the destruction of the FEDERAL LEAGUE by the Peace Agreement (Record, p. 319).

We have just seen that COLONEL JANNEY and Messrs. RASIN and HANLON all say positively that they had never been given any authority by the plaintiff in error to enter into any negotiations of any kind whatsoever with ORGANIZED BASEBALL, either for the purpose of selling

out the FEDERAL LEAGUE or the Baltimore Club to ORGANIZED BASEBALL, or for the acquiring of a Major League franchise. See testimony of:

Edward Hanlon (Record, p. 214),
Carroll W. Rasin (Record, p. 200),
Edwin W. Poe (Record, p. 227),
David Landreth (Record, p. 226),
George Schlewnes (Record, p. 227),
Philip L. Poe (Record, p. 208),
Otto G. Simonson (Record, p. 212),
John J. Fahey (Record, pp. 211-212),
L. Edwin Goldman (Record, p. 168).

There is not a scintilla of evidence in the case that anyone had authority from plaintiff in error to represent it at the meeting in New York on December 17th or at any time prior or subsequent thereto for the purpose of entering into any agreement or any other transaction looking to the destruction of the FEDERAL LEAGUE or the purchase of a franchise in ORGANIZED BASEBALL, but upon the contrary the uncontroverted evidence in this case is that no one ever had such authority.

This state of the testimony, therefore, removes from the case any question with reference to what Messrs. RASIN and HANLON and COLONEL JANNEY, or any one of them, may have said or done in New York or at any other time with respect to trying to obtain a Major League franchise from ORGANIZED BASEBALL or with respect to the Peace Agreement. The plaintiff in error never authorized anybody to speak for it upon those subjects and, of course, could not be bound by anything said or done by anybody even if he had purported to represent it, which we have seen was not the fact.

We may briefly dispose of the meeting at Cincinnati on January 5, 1916.

COLONEL JANNEY, at the invitation of Mr. GILMORE, went, as has been seen, to Cincinnati on January 5th in order to see what terms were to be offered by the parties to the Peace Agreement in settlement of the claims of plaintiff in error. It is important to understand that COLONEL JANNEY, in representing the Baltimore Club at Cincinnati, did not contemplate that it should become a party at all to the Peace Agreement. He had already, upon its behalf, denounced that agreement as illegal in his letter of January 3rd to Mr. HERRMANN, the Chairman of the NATIONAL COMMISSION (Record, p. 310). His purpose in going there was to see what offers of redress would be made to plaintiff in error for the injury which had been inflicted upon it by the making of that agreement. COLONEL JANNEY thus relates what he did in seeking redress for this injury:

> "Witness further deposed that he went to Cincinnati in January, 1916—the correspondence offered in evidence shows the occasion for his going; that Mr. Rasin had sent a telegram saying a representative would be in Cincinnati at the meeting being held by the National Commission; that Judge Goldman, secretary of the club and witness went to Cincinnati, arriving there on January 5th, he thinks; that they went to the hotel in Cincinnati where they saw a number of representatives of Organized Baseball, including Mr. Herrmann, Mr. Tener, Mr. Johnson and several others, at a distance; that the witness did not see them personally until late in the evening; that during the day Mr. Gilmore came to see witness and asked him if he was prepared to go into the meeting of the committee to consider plaintiff club's settlement and also asked who were the representatives of the Baltimore Club *officially to be at the meeting*. Witness asked what the powers of the committee were and how it was constituted, and Gilmore read to the witness from a typewritten paper, which he took from his pocket, a paragraph of the agreement

signed in Cincinnati on December 22nd, which paragraph purported to create a *committee to determine the rights of the Baltimore Baseball Club to finally settle them in view of the present situation, and that a majority of the committee were representatives of Organized Baseball. Witness told Gilmore he would not for one* moment submit the Baltimore Club's rights to that committee as a finality, but that he was there to receive any suggestion or any proposal they might make. That the Committee consequently never met. Witness then had an extended conversation with Mr. Gilmore, who said among other things that 'we were making a mistake,' that witness retaliated by informing Gilmore that '*I thought he had made a very great mistake in making the settlement that he had made in New York without informing us that he had violated our rights and been recalcitrant to his duty as President, and had made himself subject to serious charges,*' and witness also told him that the Baltimore Club did not propose to fritter away its rights under the circumstances, but '*might either* compel an accounting from those in the *Federal League* who had received money in consideration for stopping business or hold all parties concerned *liable for damages under the Sherman Act.*' Gilmore stated that they *had to maintain secrecy* about the negotiations, as otherwise they would have been impossible or would have fallen through and that he and Mr. Sinclair had advised together about it and he was sorry witness and others did not like what he had done, but that it had been done and there was no other way to do it; that Mr. Robertson, one of the owners of the Buffalo Federal Club, entered into the conversation and stated that he concurred in my view of the situation to Mr. Gilmore, and thoroughly understood my position and asked my advice as to what he ought to do under the circumstances. Witness gave him none, as his position was quite different, but witness had a friendly talk with him. That witness did not tell Mr. Gilmore in figures at that time what damages the plaintiff club had sustained by reason of the

action of the Federal League and Organized Baseball; he showed him in a general way; witness did not have to tell him; the nature of the damages discussed were the destruction of the business altogether, the loss of the utility of the players who were under contract, the loss of the utility of the grounds which they had spent some ninety thousand dollars to improve and the loss of all franchise value in the Federal League by its dissolution." (Record, pp. 317 and 318.)

That Mr. JOHNSON did not regard plaintiff in error as a party to the Peace Agreement is shown by the following statement in his testimony (Record, p. 455):

> "*The American League was not affected by the stadium story.* The peace agreement was signed December 22, 1915, and witness signed it as the authorized representative of the American League. *The Baltimore Club was not supposed to be in the peace conference at Cincinnati.* There was an authorized committee there. After the peace pact was signed Baltimore refused to serve on a committee that had been appointed. Witness never heard that Baltimore repudiated the whole business. The committee was appointed as the conference was finished, and its work was supposed to be conducted at a later period."

After COLONEL JANNEY returned from Cincinnati, knowing that the defendants in error did not intend to make any fair offer for the settlement of the wrongs which they had done, Mr. RASIN, President of plaintiff in error, called the meeting of stockholders which has been heretofore mentioned as having been held on January 27, 1916, at which the Board of Directors was authorized to bring this suit.

### WHY ORGANIZED BASEBALL WRECKED THE FEDERAL LEAGUE.

The provisions of the Peace Agreement disclose that the obvious purpose of effecting the destruction of the

FEDERAL LEAGUE was to eliminate the competition to which its existence subjected ORGANIZED BASEBALL. The stipulation entered into at the trial table reciting what was done with the plants which had been used by the clubs in the FEDERAL LEAGUE clearly shows that they were bought for the purpose of dismantling them, and not for the purpose of using them in the business of ORGANIZED BASEBALL (Record, pp. 336-338). The one exception is the plant of the Chicago Club. Under the terms of the Peace Agreement, the owners of the Chicago Federal League Club were permitted to purchase, and received $50,000 from ORGANIZED BASEBALL as a contribution towards the purchase price of the franchise of the Chicago National League Club, which was a part of ORGANIZED BASEBALL. When this franchise was purchased, a short time after the Peace Agreement, the plant of the Chicago Federal League Club was used as a ball park of the reorganized Chicago National League Club.

Mr. JOHNSON, the president of the American League, says in his testimony that ORGANIZED BASEBALL at the time of the execution of the Peace Agreement:

> "Did not need any more ball parks. *Never saw Pittsburgh Park and can tell nothing about it. Never paid any attention to it. Did not think it was worth a dollar to Organized Baseball.*
>
> "Q. Can you tell us without any lengthy answer why did you pay $50,000 for it? A. That was a tentative agreement that the National League entered into, and we abided by their decision in the matter. I could not see any reason why Pittsburgh should be given $50,000. As a matter of fact, I did not want to give a five-cent piece to Pittsburgh.
>
> "Q. *What you wanted to do was to knock them out?* A. *Knock them out, that is it.*
>
> "Q. Not to pay a cent? A. Not a nickel.

"Q. You were not as generous as Mr. Herrmann, Mr. Hermann said yesterday he wanted to help them out? A. I did not want to help them out, I am frank in that regard.

"Agreed to pay $400,000 to Brooklyn. Personally was opposed to any settlement, but if the clubs wanted it, it was their business, and the clubs agreed to it. They got a stand that Mr. Gilmore testified cost Mr. Ward $300,000, and they acquired a lease on the property. The lease was sub-let, and the chairs were sold for seventy-five cents apiece, which was a good price for second-hand chairs, which cost $1.25. There were 10,000 or 12,000 chairs. *The* $400,000 *was a very good investment in getting rid of a bunch of guerrillas. Used this word in a jocular sense and withdraws it.* The payment of $400,000 re-established *normal conditions* in baseball. They could not continue as they were going" (Record, pp. 454-455).

Mr. COMSTOCK, in explaining the purpose of the Peace Agreement, testified on cross-examination:

"Q. So you did not go out because you did not have actual money or potential financial strength at all; simply because the competition was sharp and you were not making money, and got tired of the game, and they got tired of the game and you sold out and they bought you out. That is the story, is it not? A. It is about the story" (Record, p. 393).

The purpose of the Peace Agreement is tersely given by E. W. GWINNER, president of the Pittsburgh Federal League Club, in a letter to WALTER DICKSON, dated Jan. 28, 1916, wherein he says:

"*As the Federal League has come to an agreement with Organized Baseball to go out of business,* and as your contract with this company has expired, we take this opportunity to notify you that you are a free agent, and are at liberty to negotiate with any baseball club in Organized Baseball for a position. I want to thank you for the way you performed for

me while in my employ, and I wish you good luck in whatever you may get interested in, and if you should ever be in the city, I shall be pleased to see you" (Record, p. 280).

This letter appears in the decision of the NATIONAL COMMISSION rendered May 31, 1916 (Record, p. 279 to p. 281), and the statement made therein is used as one of the facts upon which the decision is based.

That the destruction of the FEDERAL LEAGUE was the object of the war which ORGANIZED BASEBALL had been waging against that League is shown by a statement made in a decision of the NATIONAL COMMISSION rendered in 1916, with reference to the status of Pitcher Love:

> *"Had the game been in normal condition at the time, the Commission would not consider a claim predicated on this side agreement. When this deal was made, however, the Federal League was a source of great annoyance and injury to major and minor league clubs. As a war measure, the Commission found it necessary to suspend some of the provisions of the organic laws of the game and of the rules of the Commission, to enable National Agreement clubs to protect their rights to and interest in their players.* * *
>
> *"Solely as a war expedient, the Commission recognizes the side agreement between the Los Angeles and Washington Clubs as binding on both of them and therefore allows the claim of the latter,* $2,500, *the amount received by it for the draft of Player Love"* (Record, pp. 299 and 300).

Mr. GILMORE also confirms the obvious purpose of the Peace Agreement in the following extract from his testimony (Record, p. 379):

> "Q. Your real purpose was to get Organized Baseball to buy you out? A. To reimburse us for some of our expenditures, yes, sir.

control which ORGANIZED BASEBALL had acquired and exercised over the business, but as we understand the opinion, this was done for the purpose of showing that in the judgment of the Court, those aspects of the business over which this control was exercised were only incidental to interstate commerce and did not themselves constitute interstate commerce within the meaning of the Sherman Act. The opinion of the Court of Appeals will be adverted to later.

There were, however, other questions presented to the Court of Appeals under the assignments of error in that Court made by the appellants there, who are the defendants in error in this Court, as will be seen by reference to pages 64 to 72 of the Record, where those assignments of error are set out.

In the aforegoing statement of facts it has been our purpose to set forth all the facts of the case for the purpose of showing that the judgment of the Supreme Court of the District of Columbia was right and that the testimony clearly establishes not only that the business involved in the case was interstate commerce, but also that there was no error of any kind made by the trial Court in any of its rulings. In other words, that the facts of the case established plaintiff's right to the judgment which was rendered in its favor and that this judgment should have been affirmed and not reversed by the Court of Appeals of the District.

We propose now to discuss the legal propositions which are presented by the facts stated. Two general propositions were advanced by defendants in error in the Court of Appeals which denied the right of plaintiff in error to a judgment. First, they contended that the business in which the parties to the suit were engaged was not interstate commerce, and, secondly, that defendants in

error had not monopolized that business, or any part thereof, and had not entered into any conspiracy to monopolize or restrain it or any part thereof. Defendants in error also contended that the trial Court had committed certain errors in its rulings upon the admissions and rejections of evidence and upon the prayers and instructions.

We shall discuss all these questions under the following propositions:

**PROPOSITIONS:**

**(1) That the business of providing exhibitions of professional baseball as conducted by defendants in error and by plaintiff in error was interstate commerce within the meaning of the Sherman Act;**

**(2) That the agreement and combination entered into and maintained by the defendants in error, whereby the entire business in the United States of providing exhibitions of professional baseball was brought under the control of defendants in error and their confederates in Organized Baseball, and as that agreement and combination were actually administered amounted in law to a conspiracy in restraint of trade among the several states, and a monopoly, or an attempt to monopolize a part of commerce among the several States within the meaning of the Sherman Act;**

**(3) That there is no testimony in this case legally sufficient to show that the plaintiff in error has ever done any act or thing to waive or defeat, or in any degree affect or prejudice its right to recover damages under the Sherman Act for the injury to its business caused by the wrecking of the Federal League by the defendants in error, for the purpose of maintaining their monopoly, and**

interstate commerce, we call the Court's attention to the fact that when the FEDERAL LEAGUE was wrecked in 1915, all that intercourse between the states which had been occasioned by the movement of its teams and equipment forever ceased. That current of interstate commerce which was created by the regular and constant movement of the eight teams around their predetermined circuit, over a period of five months in each year, was forever annihilated after the defendants in error succeeded in destroying the FEDERAL LEAGUE; no more was there that communication, transportation, travel and intercourse which existed when that League was a going concern.

But as sharply as what has just been stated exemplifies the inherent and essential interstate character of the business here involved, the same thing will be demonstrated by a brief examination of the important features of the business as it was conducted at the time with which the Court is here concerned, taking as an example the American League, one of the two major leagues in ORGANIZED BASEBALL. This League during 1914 and 1915, and for some years prior thereto, was made up of eight constituent clubs in eight different cities, in seven different States: Boston, New York, Philadelphia, Washington, Detroit, St. Louis, Chicago and Cleveland. Each of these so-called clubs was a separate incorporated business enterprise, with large capital, having its own grounds and equipment and employing a team of players.

We have already explained that a definite circuit is essential to the conduct of this enterprise, for the reason that in order to insure public patronage a definite schedule of games must be provided between definitely ascertained contestants. At the foundation, therefore, of the American League's business—*in its primary conception*—is a circuit embracing seven different states. No single club in that circuit could operate without the other mem-

bers of the circuit, and accordingly in the very beginning of its business—*at its original organization*—the matter of interstate relationship is not only important, but is predominant and indispensable.

It follows, of course, from what we have stated that communication, travel, transportation and intercourse between these various clubs in these eight different cities and states is the vital principle of the League. The circulation of the teams of these clubs around the organic unit of the League or circuit is as essential to the life of the League and its several constituent enterprises as is the circulation of the blood around a human body to the life of a human being. If that circulation is stopped the League dies.

But there are other considerations which show how predominantly the element of interstate commerce enters into the fundamental conception, organization and conduct of this business. We have at some length shown heretofore in this brief that one of the main elements in the success of the business is the intercity, interstate and intersectional contest provided by the clubs in the League. In the two major leagues, the American and the National, the clubs are located in the largest cities east of the Rocky Mountains; it is the fact that the Philadelphia, the New York or Boston Club sends its team of players to Washington or some other city that causes large crowds to assemble there to witness the games. The game symbolizes a contest of skill between the two cities that have thus been brought together by means of interstate communication and travel. Each team of each club in the League carries with it, and it is essential to the profit of the enterprise that it should carry with it, its representative character; that is, that it should symbolize the great city that it represents to the audience assembled upon the ball ground to witness the contest.

In addition to this representative city and state aspect there is also the element of intersectional rivalry. Experience has shown that the game is most largely patronized when clubs are so located as to provide a contest for supremacy between the Eastern and Western sections of the country.

It has already been emphasized that it is necessary to distinguish between baseball as a *sport*, that is, where it is played merely as a means of physical exercise and diversion, and the *business* of providing exhibitions of professional baseball in which defendants in error are engaged, and in which the plaintiff in error was engaged until it was destroyed. The business of ORGANIZED BASEBALL represents and has represented for many years, an investment of colossal wealth. Defendants in error who dominate ORGANIZED BASEBALL are not engaged in a sport. They are engaged in a money-making business enterprise in which all of the features of any large commercial undertaking are to be found. When the teams of the National or American Leagues or of any other league are sent around the circuit of the league, they go at the direction of employers whose business it is to send them, and whose profits are made as a result of that business operation.

The team is not engaged in a pastime for its own amusement. Its players are the employees of a corporation which uses their services for the purpose of transporting them from state to state in order that they may give an exhibition of skill, which people can be charged to witness. Here again the interstate character of the business appears prominently. In the statement of facts preceding this argument it was pointed out that a schedule of games is arranged at the beginning of each playing season, fixing where the teams of each club shall travel and where they shall play upon specified days;

that is to say, the very nature of the enterprise requires that its activities shall penetrate and the teams shall be transported as essential units into all the states in which the clubs in the League are located. When, for instance, the New York Club in the American League sends its team upon a journey to Washington, on a given day, it does not send it there without having known from the beginning of the playing season that the Washington Club's team is going to be there to meet it; the Washington Club's team having in turn pursued its journey through the other states according to a schedule which provides for its being in the City of Washington upon the day that the New York Club's team arrives. Without such an arrangement which directly contemplates and requires travel, intercourse and commerce among the states the business could not exist at all.

When, however, the profit-making aspect of the business is examined it will be found that the interstate element is still further magnified. The vast investment of capital which has been made in it is required, among other things, in order to provide a place at which the teams in the League may play their contests. Each club that is to say, each of the separate business enterprises who are members of the League, has a ball park, with stands erected upon them, sometimes, as in the case of a major league club, costing several millions of dollars. Every club in the League earns its profit not only by the drawing capacity of its team at home, but also by that of the teams of the clubs which its team visits in the various cities in the League. The gate receipts in all of the cities in which the clubs are located are divided according to a definite proportion, fixed by agreement between the club of the city in which the game is played and the club employing the visiting team. For example, the St. Louis Club's team may have a very small drawing capacity, and when the New York Club's team visits

that city and the latter club is paid its proportion of the gate receipts the return may be small; but, upon the other hand, when the St. Louis Club's team visits the City of New York, where the drawing capacity of that club's team is great, its share in the gate receipts will be very large. There may be, and doubtless are, instances where a club in one city could not exist upon its gate receipts at home, but which may prosper upon its share of the gate receipts which are paid it by the clubs in other cities of the circuit.

These facts are sufficient to afford a comparison between the business of providing exhibitions of baseball and the ordinary business which is regarded as interstate and to demonstrate how, more than in any other business than can be readily called to mind, the element of interstate commerce enters into it. In no other business that can now be recalled is there such a close interrelationship and inter-dependence between persons in one state and persons in another. The personality, so to speak, of each club in a league is actually projected over state lines and becomes mingled with that of the clubs in all the other states. The continuous interstate activity of each is essential to all the others. The clubs of each league constitute a business unit embracing territorially a number of different states. While each club has, of course, a local legal *habitat,* yet from a practical business standpoint it is primarily an ambulatory organization.

The example which we have taken above for the purpose of showing the course of business of one of the leagues is applicable to all of the various thirty-eight leagues which were parties to the NATIONAL AGREEMENT and which are embraced in what is ordinarily called ORGANIZED BASEBALL. Mr. GOLDMAN in his testimony gives some of the details of the business which show its

magnitude and illustrate how inherently the element of interstate commerce enters into it:

> "He further testified that a provision that clubs shall pay traveling expenses, including Pullman car fare, hotel bills, etc., as the players travel from place to place is put in all contracts of major leagues; that while traveling, players are subject to discipline; that major leagues take 25 people on trips, the player limit of National League clubs being 25 during the season—it has been reduced as low as 21, witness believes; that umpires do not travel with clubs, but do travel from city to city; that every major league ball player travels at least 6,000 miles during the season, and 25 men would travel 150,000 man-miles to each club, which makes 1,200,000 man-miles to each league; that teams carry with them uniforms, bats, masks, chest protectors of the catcher, gloves, shoes, etc. Baseballs, of course, are delivered to the club. The National League purchases baseballs from Spalding & Company, and the American League from A. J. Reach Company. Witness thinks balls are shipped direct from factory to different clubs. That at the parks of major league clubs scoreboards are maintained upon which are recorded the scores by innings reported by telegraph from other games in the league; that from many ball parks every play during the game is telegraphed to the city of the visiting club and frequently to other cities; that during the World Series this information is telegraphed probably to every place in the United States; that this is done to keep up and satisfy the public interest; that full accounts of all games are sent to most newspapers" (Record, pp. 117 and 118).

The plaintiff in error contends, and the trial Court so found, that defendants in error had attempted to monopolize the business of providing exhibitions of professional baseball. That is to say, plaintiff in error contended, and the fact is not disputed in this record, that every corporation or association in the United States

engaged in this business had entered into the combination known as ORGANIZED BASEBALL, which combination controlled every ball park and every professional player in the United States. Without the consent of that organization no professional baseball game could be played in the United States; no baseball team or baseball player, as such, could be employed or transported from one place to another. Plaintiff in error further contends, and the undisputed facts in this case show the contention to be true, that no independent organization could enter this business in the United States without subjecting itself to the most determined effort of this combination to extinguish it. Can it for a moment be said, in view of what we have before shown to be the nature of the business, that this power thus concentrated in the hands of ORGANIZED BASEBALL did not directly, immediately and substantially restrain interstate commerce? It has been seen that as a result of the operation of this combination all freedom of movement of the thirty-eight leagues and their constituent clubs constituting ORGANIZED BASEBALL has been restrained, hindered and deterred by the control which it exercised over each of them. And when we say freedom of movement, we mean the freedom to travel over the several states, and to carry on intercourse and commerce among the several states, because these thirty-eight leagues which constitute ORGANIZED BASEBALL penetrate practically every state in the Union, and each league has more than one state in its circuit. But not only that; it is further shown that when a new and independent league came into existence for the purpose of providing major league professional baseball in places where ORGANIZED BASEBALL had arbitrarily excluded it, because it had the power so to do, this new and independent league was annihilated because of the competition which it created. When the *Federal League Circuit* was destroyed by ORGANIZED BASEBALL the plaintiff in error could no longer send in

the due course of its business the players which it employed around that circuit into the various states where they had gone when that circuit was in existence. The interstate movement and intercourse which was vital to its business was thus interfered with and its business as a consequence totally destroyed. The 1,200,000 man-miles of transportation which that league demanded for the movement of its teams over seven different states during each year was no longer required because of its destruction. The revenue which was earned by the separate business enterprises in that league by sending the teams employed by each to the various cities to play games therein, and by sharing in the proceeds of these games, could no longer be obtained. The great business representing over $3,000,000 which the league and its constituent members established in the two years of its existence was wiped out, and all the intercourse and transportation between the several states in which the cities in the league were located were extinguished forever.

The FEDERAL LEAGUE attempted competition with ORGANIZED BASEBALL and was exterminated as a penalty for its attempt. But how many leagues would have come into existence and would have engaged in this interstate intercourse if it had not been for the menace of the monopoly? That there was likelihood of competition unless it was forestalled by ORGANIZED BASEBALL is conclusively evidenced by its effort, and its successful effort, to shut every avenue of entrance, and its deliberate forearming to destroy any organization that might be bold enough to compete with it. The great current of travel, intercourse, transportation and commerce among the states which the competition thus forestalled, would have produced, has been restrained and frustrated by this monopoly. In the face of the unmistakable features of interstate commerce which mark this business as in-

herently of that character, in view of the inevitable restraint upon intercourse, movement and transportation among the several states of persons and goods which the combination of which defendants in error are the dominating part, has established, can it for a moment be said that their monopoly is not within the purview of the Sherman Act?

For the purpose of illustrating the inherent interstate character of this business we have prepared two maps which are printed herewith. The one opposite this page shows the location of and some of the lines of travel and communication between the constituent members of "Ten of the Circuits of Organized Baseball, East of the Mississippi River." As before stated, there are thirty-eight of these circuits in ORGANIZED BASEBALL, which circuits embrace practically every state in the Union (Record, pp. 46 to 48), but as the exact location of the constituent clubs of only ten of these circuits appears clearly in the Record, we have indicated these alone upon the map. These ten circuits in ORGANIZED BASEBALL include the following cities:

1. *National League Circuit*—

| | |
|---|---|
| Boston, | Chicago, |
| New York, | St. Louis, |
| Brooklyn, | Cincinnati, |
| Philadelphia, | Pittsburgh. |

2. *American League Circuit*—

| | |
|---|---|
| Boston, | Chicago, |
| New York, | St. Louis, |
| Philadelphia, | Detroit, |
| Washington, | Cleveland. |

MAP SHOWING

# TEN OF THE CIRCUITS

OF

# ORGANIZED BASE BALL

## EAST OF THE MISSISSIPPI RIVER

1. NATIONAL LEAGUE CIRCUIT
2. AMERICAN LEAGUE CIRCUIT
3. INTERNATIONAL LEAGUE CIRCUIT
4. AMERICAN ASSOCIATION CIRCUIT
5. SOUTHERN LEAGUE CIRCUIT
6. TRI-STATE LEAGUE CIRCUIT
7. CENTRAL LEAGUE CIRCUIT
8. EASTERN ASSOCIATION CIRCUIT
9. NEW ENGLAND LEAGUE CIRCUIT
10. INDIANA-ILLINOIS-IOWA LEAGUE CIRCUIT

(Organized Baseball Map.)

3. *International League Circuit*—

| | |
|---|---|
| Providence, | Montreal, |
| Newark, | Toronto, |
| Jersey City, | Buffalo, |
| Baltimore, | Rochester. |

4. *American Association Circuit*—

| | |
|---|---|
| Indianapolis, | Minneapolis, |
| Cleveland, | Milwaukee, |
| Columbus, | St. Paul, |
| Louisville, | Kansas City. |

5. *Southern League Circuit*—

| | |
|---|---|
| New Orleans, | Atlanta, |
| Mobile, | Chattanooga, |
| Montgomery, | Nashville, |
| Birmingham, | Memphis. |

6. *Tri-State League Circuit*—

| | |
|---|---|
| Wilmington, | York, |
| Trenton, | Harrisburg, |
| Atlantic City, | Allentown. |

7. *Central League Circuit*—

| | |
|---|---|
| Evansville, | Grand Rapids, |
| Terra Haute, | Springfield, |
| Fort Wayne, | Dayton. |

8. *Eastern Association League Circuit*—

Consisting of eight principal cities in New England States, excepting Boston.

9. *New England League Circuit—*

Consisting of eight cities, such as Portland, Fall River, Lowell and other towns of similar size in New England States.

10. *Indiana, Illinois and Iowa League Circuit—*

| | |
|---|---|
| Quincy, | Decatur, |
| Dubuque, | Springfield, |
| Davenport, | Bloomington, |
| Danville, | Peoria. |

When each circuit is planned it has been seen that there must necessarily be considered the question of its geographical extent and the geographical location of each of the cities in which a club is to be established. In all of the ten circuits plotted on the map more than one state is included. In the two major leagues seven states are embraced, and in addition, one of them, the American League, takes in the District of Columbia. None of the other leagues among these ten embraces less than three states. After the league has been determined upon and its organization perfected so that business can commence, there then begins a regular and constant course of travel, by the teams and their attendants employed by the separate business enterprises making up the league, around its circuit. This is the way the business is in fact carried on and it is the only way it can be carried on as a profit-making enterprise. The lines of communication between these business enterprises are as fixed and certain and as definitely established and maintained as the lines of transportation themselves.

Likewise with reference to the FEDERAL LEAGUE whose circuit is shown on the opposite page. When it was planned as a major league, all the geographical elements which enter into the conception of such a league,—the intercity, interstate and intersectional rivalry,—were also considered, and its organization was superimposed and projected upon the map just as we have shown it. After it was established there also began that regular communication between the various clubs of the league along the pre-established lines of travel, which is vital to this business. This constant intercourse for the purposes of business continued until ORGANIZED BASEBALL decreed that those established lines of travel between these clubs in these seven states should be intercepted and destroyed and the communication, intercourse and commerce between and among them should no longer be allowed to continue.

The plaintiff in error had during the year 1914 and during the year 1915, for the entire playing season in each year (about six months) sent its players to Pittsburgh, St. Louis, Kansas City, Chicago, Buffalo, Newark and Brooklyn at regular intervals, according to a definite schedule, prepared and agreed upon before the opening of each of the playing seasons. Likewise the clubs in the other cities had, in pursuance of that schedule, visited Baltimore and all the other clubs in the league. This was the established course of business, in fact *it was the business* in which these separate clubs were engaged. It was from this interstate intercourse between the various clubs of the league that all their revenue was derived. The defendants in error got together and formed a conspiracy to prevent that intercourse from continuing. They determined that plaintiff in error should no longer be permitted to send its team to play with the teams of the other clubs of the league in the various states embraced in its circuit. They deter-

MAP SHOWING

# FEDERAL LEAGUE CIRCUIT

1915

mined to buy out these other clubs and dismantle them and make it impossible for plaintiff in error to send its team into those states where they had previously gone. *They thrust their power across the highways of interstate commerce and forbade this plaintiff in error to travel along them.* Certainly a more direct, immediate and palpable restraint of commerce cannot be imagined than that shown by these undisputed facts.

But whatever might be thought as an original question with respect to whether the kind of business in which the defendants in error were engaged was or was not interstate commerce is of no consequence, because that question has been definitely determined by the decisions of this Court.

In *Hoke vs. The United States,* 227 U. S., p. 308, this Court upheld the constitutionality of the so-called White Slave Act, and it is respectfully submitted that that decision, and the grounds upon which it proceeded are conclusive upon the question here involved. It will be remembered that in that case the Act of Congress imposed a penalty for the transportation of persons for immoral purposes. This legislation was assailed upon the ground that any immoral purpose leading to such transportation was not a part of interstate commerce and therefore it was not within the power of Congress to prohibit and punish it, under any authority derived from the commerce clause of the Constitution of the United States. It was said that the immoral purpose was formed within a state, and if carried out would be executed in another state after transportation was completed, and that it was not related to interstate transporation in any such way as to make that purpose a part of interstate commerce within the regulatory power of Congress. It was further urged that while such persons were engaged in the interstate journey they were ordinary human beings

enjoying the right of moving from one place to another, and that whatever their purpose might be such purpose was not a part of interstate commerce within the range of Federal power.

This Court rejected all of these arguments, and laid down the broad doctrine that transportation of persons between the States is interstate commerce, and that Congress has the power to regulate such transportation and to prohibit its use for an immoral or any other purpose which it may denounce as against public policy. It held that any such purpose was directly related to, formed a part of, and was inseparable from interstate commerce.

The ground of the dicision and its conclusive application to this case will be seen from the following extract from the opinion:

> "Congress is given power 'to regulate commerce with foreign nations and among the several States.' The power is direct, there is no word of limitation in it, and its broad and universal scope has been so often declared as to make repetition unnecessary. And, besides, it has had so much illustration by cases that it would seem as if there could be no instance of its exercise that does not find an admitted example in some one of them. Experience, however, is the other way, and in almost every instance of the exercises of power differences are asserted from previous exercises of it and made a ground of attack. The present case is an example.
>
> "Commerce among the States, we have said, *consists of intercourse and traffic between their citizens and includes the transportation of persons* and property. There may be, therefore, a movement *of persons* as well as of property; that is, *a person may move or be moved in interstate commerce.* And the act under consideration was drawn in view of that possibility."

In the present case it has been made to appear from the uncontradicted evidence that the transportation of persons is not only the main element in the business, but that it is an indispensable feature thereof as it is everywhere conducted. *It has been seen that the most accurate description of the business in this case is, the transportation of baseball teams by their employers from city to city and from state to state for the purpose of giving exhibitions of professional baseball for the profit of the employers.* The argument that when a team of players travel under the direction of their employers for the purpose of the employer's business from one state to another their transportation is not a part of interstate commerce, is simply in defiance of plain admitted facts and controlling adjudications. Neither one of the major leagues, nor any of their constitutent clubs could exist or carry on their business at all without the transportation of the players upon their teams, the umpires and officers of the leagues and clubs, and their equipment and paraphernalia. When these players, umpires and officers travel they do so under the direction and subject to the discipline and government of their employers and as a part of the business in which those employers are engaged, and only in pursuance and in furtherance of that business.

It is sufficient here, in order to show that the facts of the case at bar are indistinguishable from a legal viewpoint from the *Hoke case*, to understand that it was decided in that case that the immoral purpose of the transportation inhered in the act of transportation so as to render that purpose a part of such transportation, and consequently a part of interstate commerce. For in this case, to an obviously greater extent did the purpose of the transportation, namely, the accomplishment of the object of the business in which the parties to this suit were

engage inhere in, accompany, and form an inseparable part of the act of transporting their teams of players, umpires, officers and paraphernalia while they were in the regular, continuous and uninterrupted transit around the circuit of cities which constitute their respective leagues.

This Court pointed out in the *Hoke case* that in almost every instance of the exercise by Congress of the broad power to regulate interstate commerce contained in the Constitution, the validity of such an exercise of power is assailed, and distinctions between the new exercise of power and previous instances of it are attempted to be established. In the case at bar counsel for defendants in error have attempted to distinguish all previous decisions in which a particular business operation has been held to be interstate commerce, but we submit that the Court should meet such an attempt as it did in the case just cited, and hold that however the business of giving exhibitions of professional baseball may differ in the mere names that are applied to its details, that in its essence it is the same kind of business which has over and over again been held to be interstate commerce.

If, as this Court so distinctly declares, commerce among the states consists of intercourse between their citizens, and includes the transportation of persons, how is it possible to say that the business involved in this case is not commerce among the states when the whole vitalizing principle of it, is intercourse between citizens of the several states, and its predominating feature the transportation of persons.

Let us draw a parallel between the *Hoke case* and the case at bar. We have seen that it is essential that each club of a league should send its team and their equipment regularly and in accordance with a definite, pre-

arranged schedule, and under proper supervision and direction, around the league's circuit from city to city and state to state. We will suppose, for illustration, that one of the teams of a major league club is moving around its circuit under the control of the club's manager. That manager has twenty-five men in his charge, all under contract for long periods, requiring them to make constantly journeys of this kind. The movement of these men is for a definite purpose and in pursuance of a long-established course of business. Defendants in error say that this movement of these men under these circumstances is not a part of interstate commerce. But they would, of course, have to admit under the explicit decision in the *Hoke case* that if the manager who had these men in charge for the purpose before stated should, while upon the same journey, for example, while he and his men were traveling between New York and Washington, meet a woman in the station at Philadelphia whom he had never seen before and induce her to get upon the train with him and go to Washington, for an immoral purpose, he paying her fare, this act of transporting the woman for such purpose would be a transaction in interstate commerce. Does not this parallel expose the fallacy of the contention of defendants in error?

The case at bar is also indistinguishable from that of *Pigg vs. International Text Book Company*, 217 U. S. 91. There the International Text Book Company, a Pennsylvania corporation, was engaged in teaching by correspondence. It had an agent in the State of Kansas who secured scholars in that state, and received and forwarded the money obtained from them. The studies of the pupils were pursued by correspondence through the mails with the corporation in Pennsylvania. The State of Kansas required all foreign corporations to take out a license before they could do business in that state, and

forbade, among other things, any corporation failing to do so from maintaining any action in the courts of that state. The International Text Book Company sued one of its scholars, Pigg, a resident of Kansas, who defended it upon the ground that as the Text Book Company had not secured a license to do business in Kansas, the action was not maintainable in its courts.

The question arose as to whether or not the Kansas statute requiring such license under the penalty prescribed, was a regulation of interstate commerce. The only communication between the student in Kansas and the Text Book Company was by mail; the instruction was given by sending text books in this manner from Pennsylvania to the student in Kansas, and the student in like manner, returning his answers to the Text Book Company.

It was argued on behalf of the State of Kansas, in support of its law, that when the text books came through the mails they were so many pounds of paper which were being transported at the ordinary rate; that nothing was done by either the Text Book Company or the scholar while these books or the answers were in the mails, with respect to them; that the operation of reading the books and correcting the answers which constituted the business took place after the transportation by mail had ceased. It was sought to separate the act of transportation from the business of teaching in which the Text Book Company was engaged, but this Court held, that when the mails were used in this way as an essential part of a business, the act of transportation could not be separated from the business; that to subject the thing transported through the mails into Kansas to the regulation of its law would amount to a denial of the use of the mails for that business; that the statute of Kansas

constituted a burden upon interstate commerce and a regulation thereof, and was therefore invalid in so far as it applied to the business of the Text Book Company carried on in the State of Kansas through the use of the mails.

This Court in its opinion disposes of every argument that has been made in the case at bar, to the effect that the business in which defendants in error are engaged is not interstate commerce, as will be seen from the following quotation from its opinion:

> "It is true that the business in which the International Textbook Company is engaged is of a somewhat exceptional character, but, in our judgment, it was, in its essential characteristics, commerce among the states within the meaning of the Constitution of the United States. *It involved, as already suggested, regular and, practically continuous intercourse between the Textbook Company, located in Pennsylvania, and its scholars and agents in Kansas and other states.* That intercourse was conducted by means of correspondence through the mails with such agents and scholars. While this mode of imparting and acquiring an education may not be such as is commonly adopted in this country, it is a lawful mode to accomplish the valuable purpose the parties have in view. More than that; this mode—looking at the contracts between the Textbook Company and its scholars—*involved the transportation from the state where the school is located to the state in which the scholar resides, of books, apparatus and papers, useful or necessary in the particular course of study the scholar is pursuing and in respect of which he is entitled, from time to time, by virtue of his contract, to information and direction. Intercourse of that kind, between parties in different states—particularly when it is in execution of a valid contract between them—is as much intercourse, in the constitutional sense, as intercourse by means of telegraph*—'a new species of commerce,'

to use the words of this Court in *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1, 9. In the great case of *Gibbons v. Ogden*, 9 Wheat. I, 189, this Court, speaking by Chief Justice Marshall, said, 'Commerce, undoubtedly, is traffic, but it is something more; it is *intercourse.*' Referring to the constitutional power of Congress to regulate commerce among the States and with foreign countries, this Court said in the *Pensacola case*, just cited, that 'it is not only right, but the duty of Congress, to see to *it that intercourse* among the states and *the transmission of intelligence* are not obstructed or unnecessarily encumbered by State legislation.' This principle has never been modified by any subsequent decision of this Court.

"The same thought was expressed in *Western Union Tel. Co. v. Pendleton*, 122 U. S. 347, 356, where the Court said: 'Other commerce deals only *with persons*, or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only *ideas, wishes, orders and intelligence.*' It was said in the Circuit Court of Appeals for the Eighth Circuit, speaking by Judge Sanborn, in *Butler Bros. Shoe Co. vs. United States Rubber Co.*, 156 Fed. Rep. 1, 17, that, '*All interstate commerce is not sales of goods. Importation into one State from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade and dealing between citizens of different States, which contemplates and causes such importation, whether it be of goods, persons or information, is a transaction of interstate commerce.*' If intercourse between persons in different States by means of telegraphic messages conveying intelligence and information is commerce among the States, which no state may directly burden or unnecessarily encumber, we cannot doubt that *intercourse or communication between persons* in different states, by means of correspondence through the mails, is commerce among the states within the meaning of the Constitution, *especially where, as here, such intercourse and communication really relates to matters of*

> *regular, continuous business* and to the making of contracts and the transportation of books, papers, etc., appertaining to such business. In our further consideration of this case we shall therefore assume that the business of the Textbook Company, by means of correspondence through the mails and otherwise, between Kansas and Pennsylvania, was interstate in its nature."

Defendants in error in their brief below in support of the proposition advanced that the business in which ORGANIZED BASEBALL is engaged is not interstate commerce within the meaning of the Sherman Act, said, "in the first place the regulated output of human effort and skill independently of any relation to the production of any article of commerce has never been regarded as interstate commerce and ought not to be so regarded." It was further said that in no decided case has it been held that "*personal effort*, considered apart from production, *is an article of commerce.*"

It is difficult to perceive the relevancy of any discussion about an *article* of commerce in this case. The defendants in error are not engaged in selling goods, but are engaged in the business of providing exhibitions of professional baseball, by transporting teams from state to state, which business is not an *article* of commerce, *but is commerce itself.* Commerce may be carried on in one of its forms by traffic in articles of merchandise, but there are countless forms in which it may be carried on without traffic in such articles. It was hardly to be expected that a proposition would be advanced in support of the contention of defendants in error, which was rejected nearly 100 years ago in the very first important case in which the commerce clause of the Constitution was expounded.

In *Gibbons vs. Ogden*, 9 Wheaton, p. 189, Chief Justice Marshall employed this classic language:

"The words are: 'Congress shall have power to regulate commerce with foreign nations and among the several states, and with the Indian tribes.'

"The subject to be regulated is commerce and our Constitution being, as was aptly said at the bar, one of enumeration, and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse."

It is also difficult to discern the relevancy of the contention that personal effort is not an article of commerce. Personal effort while it may not be an article of commerce is often commerce itself, but we are not concerned with any such question here. It may be passed by saying that it has been solemnly adjudicated by this Court that interstate commerce may be created by the mere act of a person in allowing himself to be transported from one state to another, without any personal effort at all; and further that it is very difficult to see how the case of *Pigg vs. International Text Book Company, supra*, could have been decided as it was except upon the principle that the mere exchange of instruction and information, which is about as purely a matter of personal effort as anything that can be imagined, may be a subject of interstate commerce.

This Court in that case in defining the scope of interstate commerce said:

"Importation into one state from another is the indispensable element, the test of interstate commerce; and every *negotiation, contract, trade* and *dealing* between citizens of different states which contemplates and causes such transportation, *wheth-*

*er it be of goods, persons or information is a transaction of interstate commerce."*

It has already been demonstrated that the *importation of the persons* constituting the teams into one state from another is an indispensable element of the business of providing exhibitions of professional baseball, that the *contract* between and the course of dealing among the clubs composing each of the leagues forming a part of ORGANIZED BASEBALL *directly and immediately contemplate and require* such importation and that this contract and course of dealing are the *cause* of the importation of these persons. Applying therefore the very language of the Court which has just been quoted, the subject-matter under discussion constitutes interstate commerce.

Defendants in error ignore every element and every detail in their business except the playing of the baseball teams employed by them in the baseball field; the whole elaborate commercial system through which the business is organized and conducted, and all its manifold operations, over and through different states is brushed aside and they argue that the mere muscular contraction and relaxation of the player in the baseball field at a particular instant of time is not interstate commerce. They say that these muscular operations of the players are *"personal effort"* and not *articles* of interstate commerce.

If some ultimate detail in a transaction of interstate commerce is separated from the substance and body of the transaction, as the defendants in error seek to separate the act of a player in throwing a ball upon a ball field, from all the steps which are taken to bring the ball player in the due course of business from other states, a plausible argument might be made that such an isolated detail does not constitute interstate commerce. By such a process of reasoning the American Tobacco Company,

for instance, in the leading case of *United States vs. American Tobacco Company,* 221 U. S. 106, might have removed its gigantic monopoly from the operation of the Sherman Act. It might with equal force have argued that the sale of cigars, cigarettes and other forms of tobacco over the counter in its chain of stores was its business, and, as this did not take place until after every other act of the monopoly in providing that tobacco had been ended, no interstate commerce was involved. In other words, that every time a customer bought a plug of tobacco it was a "new fact in history" (as counsel for defendants in error call it), and therefore that the combination of manufacturers of tobacco in the United States, and the control of every pound of tobacco that was shipped over the railroads of the country among the several states, was not a restraint of interstate commerce.

> See *United States vs. American Tobacco Co.*, 221 U. S. 106, 184.

In *Standard Oil Co. vs. United States,* 221 U. S. 1, 168, this Court answered the argument there made, "That the act, even if the averments of the bill are true, cannot be constitutionally applied, because to do so would extend the power of Congress to subjects *dehors* the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the states," by saying:

> "But all the structure upon which this argument proceeds is based upon the decision in *United States vs. E. C. Knight Co.*, 156 U. S. 1. The view, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this Court in connection with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound, as to cause the contentions to be plainly foreclosed and to require no express notice."

In *Swift & Company vs. United States,* 196 U. S. 375, the Court again disposed of a similar contention. There one of the allegations of the bill against Swift & Company charged a conspiracy to monopolize the meat trade of the country by controlling the purchasing of cattle in the stockyards of Kansas City, Chicago and other cities. It was argued that when the cattle were brought into these stockyards their interstate journey was completed, and that the purchase of this stock in the open market in a yard in a particular state, after the cattle had been brought to rest therein, was a separate and independent transaction from the shipment of the cattle in interstate commerce, and was therefore not a part of interstate commerce within the meaning of the Sherman Act.

The Court said:

> "It is said that this charge is too vague and that it does not set forth a case of commerce among the states. Taking up the latter objection first, commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce." (PP. 398-399.)

In the business now under consideration it has been seen that throughout the playing season the ball teams, their attendants and paraphernalia, are in constant revolution around a pre-established circuit. Their movement around this circuit is only interrupted to the extent of permitting exhibitions of baseball to be given in the various cities. When exhibitions in one city are com-

pleted the clubs resume, according to the agreement made, and plan of business long established, their course of travel on to another city, and thus on and on until the schedule of exhibitions is completed. The interruption in interstate movement is nothng like as great as that in the *Swift case, supra,* because there the cattle changed ownership in the stockyards, and if they were again put into interstate commerce it would be at the volition of a different owner from the one who controlled the original interstate transportation. In the case at bar, the constant movement of the teams from state to state during a period of over five months each year, is under a single direction and control and in pursuance of one object.

Again, defendants in error have argued that the subject-matter of this controversy is "amusement," and that this cannot be an "*article*" of interstate commerce. The fallacy of that contention also has been exposed above by showing that in presenting this argument they are merely shutting out from view all of the substantial elements of the business in which they are engaged.

Defendants in error are not engaged in the business of amusing themselves, but are engaged in conducting a business whose profit is derived by sending baseball teams from city to city in various states to gratify a desire for amusement on the part of the public. They satisfy, through interstate commerce, an existing demand exactly as the American Tobacco Company reaps its profit by shipping its product in interstate commerce to satisfy the appetite (for tobacco) of the people in the various states of the country. The fact that the people whose individual appetites are thus satisfied may be located in particular places does not any the less make the movement of the great volume of tobacco sent over the railroads of the country for this purpose interstate commerce.

This brief will not be prolonged to quote from other decisions of this Court which merely reiterate the doctrine that the transportation of persons, property, information, etc., is interstate commerce, but we content ourselves with merely citing some of them:

*Champion vs. Ames,* 188 U. S. 321.
*Pensacola Telegraph Co. vs. Western Union Telegraph Co.,* 96 U. S., p. 1.
*United States vs. Patten,* 226 U. S. 525.
*Loewe vs. Lawlor,* 208 U. S. 274.
*Western Union Telegraph Co. vs. Foster,* 247 U. S. 105.

Conclusive as are the aforegoing decisions of this Court upon the questions presented in the case at bar, we cannot refrain from bringing to its attention one or two decisions in the lower Federal Courts, in which the facts are so nearly identical with those in the case at bar.

In *Marienelli vs. United Booking Offices of America,* 227 Fed. Rep. 165, the question was presented as to whether a company engaged in booking vaudeville performers for a circuit embracing theatres in cities in different states was engaged in interstate commerce within the Sherman Act. District Judge LEARNED HAND, in a very exhaustive and luminous opinion, reviews the authorities upon this question, and decides that the business there involved, which, as we have stated, is indistinguishable in its essential features from the business in this case, is interstate commerce. In delivering his opinion Judge HAND said:

> "The combination or conspiracy is alleged to be in restraint of the defendants' business, and the first inquiry must be of the nature of the business. Undeniably certain aspects of the business are interstate commerce, as, for instance, the contracts made by the booking companies under which the performers

must go from state to state, throughout the circuit, acting here and there, and fulfilling their contracts as much by the travel as by the acting. Since Hoke vs. United States, 227 U. S. 308, 33 Sup. St. 281, 57 L. Ed. 523, 43 L. R. A. (N. S.) 906, Ann. Cas. 1913E, 905, and Wilson vs. United States, 232 U. S. 563, 34 Sup. Ct. 347, 58 L. Ed 728, it cannot be doubted that this feature of the business was within the complete powers of Congress, for such purposes as it might find to the public interest. This, moreover, applies as well to that feature, incidental to the foregoing, which consists in the carriage of the performers' stage properties and paraphernalia from one state to another, a necessary part of the performance of their contracts with the defendants. The Lottery Cases, 188 U. S. 321, 23 Sup. Ct. 321, 47 L. Ed. 492. The same may be said of the scenery and advertising matter sent from state to state by the theatres themselves. In respect of all these details, the business, therefore, consists of interstate commerce.

"The nature of the defendants' business is one thing, determinative in cases where the question arises of a state license tax, or the like; the subject-matter of their combination is, at least formally, different. Perhaps the distinction has small practical consequence here, yet is important in such shifty questions to keep the principles in mind. No doubt the proposition still stands good that the restraint of interstate commerce must be direct (United States vs. Patten, 226 U. S. 543, 33 Sup. Ct. 141, 57 L. Ed. 333, 44 L. R. A. (N. S.) 325, just as it did when E. C. Knight vs. United States, 156 U. S. 1, 15 Sup. Ct. 249, 39 L. Ed. 325, was decided; but nobody can intelligently read the decisions without becoming aware that the actual meaning of the words has greatly changed. All the cases, of course, presuppose that the contract has an effect upon the transit of some goods or persons across state lines, but just what that effect must be is the point of divergence. From some expressions of the earlier cases, it might be supposed that the agreement must in its terms concern the transit, or in other words that the conscious

purpose of the parties must be to change movement, which would otherwise occur; but that rule is not now the law. Since perhaps Addyston Pipe Co. vs. United States, 175 U. S. 211, 20 Sup. Ct. 96, 44 L. Ed. 136, and certainly since United States vs. Patten, supra, a case which had an unusual degree of consideration by the Supreme Court, it must be understood that the combination must be judged by the usual rule of legal responsibility; that is to say, whether the effect upon the movement of goods or persons is within those consequences which would reasonably be supposed to result from the parties' acts.

"The words 'direct' and 'indirect' permit of some latitude, as the cases show. In nature all results are equally inevitable, and the category has no useful application; it woud be arbitrary and meaningless. Only when we speak of conscious persons, necessarily ignorant of all the causes which actually operate, can the distinction become useful; and it is, of course, only in relation to persons that it is used juristically. As I have said, the rule no longer is that only those results are direct which fall within the immediate purpose, or high light of intention, a rule which would eliminate consequences, certain enough to follow, but neither desired nor intended. When once that test is abandoned, there remains only the common test of legal responsibility, which I have mentioned, or else the test of more or less. It may be that some effects of a combination, certain enough to follow, bear so small a proportion to the sum total that the Sherman Act will not reach the combination as a whole. Although the statute may seem intended to exercise the Federal power to its fullest capacity, and although Congress no doubt might make illegal any combination which to the parties' knowledge affected interstate commerce in any degree whatever, the decisions of the Supreme Court certainly prove that it has not been so interpreted, and that results insignificant in proportion to the total effect will be disregarded. This, in any case, is the present meaning of the test of 'direct'

and 'indirect' as I understand it in the development of the decision.

"If this be so, then the case depends upon whether the effect upon interstate commerce of a monopoly of the defendants' business is so inconsiderable as not to come within the statute. In the light of the allegations, I do not think that it is such. It may well be that the results of a monopoly of the playhouses within a single state would not come within the statute, though it were shown inevitably to affect the entrance or exit from the state of performers and their accoutrements, and though that result were obvious to the parties concerned from the outset. *Here there is no such case, because here the contracts of hiring involve for their performance the transit quite as much as the performance.* I cannot say that this feature is so inconsiderable a part of the business that it must be disregarded; I must say that it is within the necessary consequences of their acts. * * * * * Of course, persons not engaged in interstate commerce may violate the Sherman Act. Loewe vs. Lawlor, 208 U. S. 274, 28 Sup. Ct. 301, 52 L. Ed. 488, 13 Ann. Cas. 815. But I mean more than this, for in the case at bar the combination relates to the business as a whole and not to the interstate features of it. It does not follow, because the combination is within the act, that the business may not be subject to a state tax. How far the effects upon interstate commerce of the combination must preponderate to bring it within this statute is not a question of the extent of federal powers, but of the extent to which Congress intended to exert such powers. That it intended to reach every conceivable restraint of such commerce may not be true, and the degree to which it reaches is not measured by the power of the states in the regulation of their internal affairs until Congress intervenes. It is no objection that the combination declared illegal shall be concerned in great part with internal matters.

"Nor need we be concerned with the question whether the acts in pursuance of the combination which injure the plaintiff are themselves a part of

interstate commerce, for the illegality arises from the project or plan as a whole (Swift vs. United States, 196 U. S. 375, 25 Sup. Ct. 276, 49 L. Ed. 518; Nash vs. United States, 229 U. S. N. S. 373, 33 Sup. Ct. 780, 57 L. Ed. 1232), and the performance, innocent without it, takes its color from its setting.

"The case of Metropolitan Opera House vs. Hammerstein, 162 App. Div. 691, 147 N. Y. Supp. 532, decided by the Appellate Division of the Supreme Court, is not necessarily an authority to the contrary. There the plaintiff was in the habit of presenting opera in several states, and sent its performers, scenery men, and stage properties about as occasion required. It also imported artists from Europe to perform in New York and elsewhere. These elements of its business were certainly interstate, and within the express control of Congress, and the question turned, as here, whether a monopolization of the business was a restraint upon interstate commerce. If the test really be the proportion of these features to the business as a whole, obviously the case is not an authority, unless the facts are the same. They differ at least in this respect: That it was not there the course of the business to book all performers under one contract, which required them to go from one state to another. Suppose the case of a traveling troupe of players, who were constantly on tour from state to state at short 'stands,' and who had no fixed playhouse; certainly their business would be interstate. On the other hand, a combination of local playhouses might not be in restraint of interstate commerce, though it affected the interstate movement of actors or scenery. The defendants' business is not so wholly interstate as though they managed a troupe of traveling players, because they own theatres; but it consists none the less in universally securing from the outset that substantially each player shall in fact travel upon interstate tour. I think it fair, fully recognizing the loose character of the distinction, to call the interstate element in the case at bar 'essential,' and that in Metropolitan Opera Co. vs. Hammerstein 'inciden-

tal. The rule is not so much a constitutive principle as a regulative guide."

See further, *Motion Picture Patents vs. Universal Film Mfg. Co.*, 235 Fed. 401.

Defendants in error are appalled at the suggestion that the business here involved should be held subject to regulation by Congress. Prophesies of disaster have always accompanied the argument against the application to new facts of an old rule. But the Courts have not in this way been deterred from declaring the law. The fear of defendants in error may be somewhat allayed by the fact that Congress, although it has included this as it has every other business which is a part of interstate commerce within the purview of the Sherman Act because of the obvious wisdom of preserving throughout the whole field of that commerce the fundamental principles of freedom, has not seen fit yet to subject this as it has not other branches of interstate commerce to strict regulation by a Federal administrative agency. The wisdom of doing so may be influenced by the conduct of the defendants in error in the future.

But now it is in the same situation in this respect as a natural gas company transporting its product by pipelines from one state to another and distributing it in cities and towns in the latter state. The transportation and the service of gas to consumers in the state to which it is transported is indubitably within the prohibitions of the Sherman Act, but the subjects of rates, efficiency of service, etc., are held to be matters of local regulation until Congress shall see fit to exercise its supreme power and legislate itself upon these subjects.

*Penna. Gas Co. vs. Pub. Service Com.*, 252 U. S. 23.

A simple test of this question would be to consider it from the standpoint of the power of a state over these various corporations in other states. If for instance the state of Missouri should attempt to exclude any foreign corporation from sending its teams into that state to participate in exhibitions or should impose regulations which would be so burdensome as to be prohibitive, we imagine that defendants in error would then vigorously contend that such interference by the state was prohibited by the commerce clause of the Federal Constitution.

In its opinion in this case reversing the judgment of the trial Court, the Court of Appeals of the District said:

> "The business in which the appellants were engaged, as we have seen, was the giving of exhibitions of baseball. A game of baseball is not susceptible of being transferred. The players, it is true, travel from place to place in interstate commerce, but they are not the game. Not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end. Nothing is transferred in the process to those who patronize it. The exertions of skill and agility which they witness may excite in them pleasurable emotions just as might a view of a beautiful picture or a masterly performance of some drama, but the game effects no exchange of things according to the meaning of 'trade and commerce' as defined above."

It will be observed that the Court in dealing with the nature of the business, limited its consideration *to the game*. It is the fact that "*the game* is not susceptible of being transferred," which forms the basis of its conclusion. This, we respectfully submit, shuts from view all the important and controlling aspects of *the business* with which we are concerned. The business of defend-

ants in error is to cause teams to move constantly around circuits each embracing a number of states in order to provide exhibitions of baseball. If it were not for that movement in pursuance of a long-existing contractual arrangement and course of dealing this business would not exist and no professional games would ever be played.

Speaking of *the game*, the Court of Appeals says, "It is local in its beginning and in its end." Even if this were correct, which we do not admit, it does not reach the question in this case. This case involves a *business* and not *a game*. And, of course, no one could say that the business of transporting players from state to state for the purpose of providing exhibitions of baseball "is local in its beginning and in its end." This is just the opposite of what *the business* is, because it is palpably *interstate in its beginning and in its end.*

Of course, as we have before explained, some incident of an admittedly interstate transaction if viewed separately from the body of the transaction of which it is a part may be rendered subject to the same remark made by the Court regarding the game of baseball. But even when thus regarded, we submit the comment of the Court is not applicable, because as we have seen even the game itself, when regarded separately from the interstate transaction of which it is a part has present in it a most important element of interstate intercourse and relationship. The game we repeat is played only because of the system of intercourse and commerce which has been previously established with the other members of the particular league in the other states, providing for a continuous *interchange and transfer of teams* among them over successive seasons for the purpose of giving regular exhibitions according to a prearranged schedule. But all this we have already at length explained and it need not be repeated here.

We have not, in the above discussion, made any reference to the various details of this business which reflect its inherently interstate character. It is common knowledge that baseball is the pre-eminent American sport. Millions of people follow the daily reports of the results of the games in the press, and in the large cities gather in the afternoons around the newspaper offices to see the bulletin reports of the scores. Not only so, but vast numbers of people travel from one city to another for the purpose of witnessing the games. Telegraph facilities are installed at all the ball parks in the Major Leagues, and in those of the more important Minor Leagues, where reports of the games are sent out and are received throughout the country. The Western Union Telegraph Company pays to the National League alone the sum of $18,000 annually for the exclusive privilege of having its wires on its grounds. Upon a scoreboard in each ball park the results of the games being played at the same time are indicated, so that the crowd assembled at each park is informed of the progress of the other games (Record, p. 262).

Each league contracts for a uniform type of baseball, which are used in tremendous numbers and are shipped by the manufacturer from time to time as they are needed by the various clubs. As illustrative of the volume of interstate commerce which this incident alone creates, it should be said that A. G. Spalding & Co., who furnish baseballs to the National League, are paying to the latter $20,000 annually for a period of twenty years, which will make a total of $400,000 for the entire period, for the exclusive privilege of advertising the ball it manufactures as the official National League ball. The A. G. Reach Company, under a similar contract, is paying the American League $40,000 annually for a similar privilege over a period of nineteen years (Record, p. 268).

It appears in the record that the five World's Series games of 1916 were played upon alternate days at Boston and New York. It is common knowledge, of course, that these games arouse the widest popular interest and that people come from all parts of the country to witness them, special trains being run to provide convenient transportation for the players and spectators. The gross receipts of the National Commission from these five games alone in 1916 were around $400,000 (Record, p. 271).

These incidents while in themselves not determinative of the question of whether or not the business is interstate in character, yet when considered in connection with its main features emphasize the truth of what has before been said, that there is scarcely any business which can be named in which the element of interstate commerce is as predominant as that in which defendants in error are engaged.

## II.

**That the Agreement and Combination Entered into and Maintained by Defendants in Error Whereby the Entire Business in the United States of Providing Exhibitions of Professional Baseball was Brought Under the Control of Defendants in Error and their Confederates in Organized Baseball, and as that Agreement and Combination were actually Administered, Amounted in Law to a Conspiracy in Restraint of Trade Among the Several States and a Monopoly or an Attempt to Monopolize a Part of Commerce Among the Several States Within the Meaning of the Sherman Act.**

In the Statement of Facts under the headings, "Monopoly of Defendants in Error Over the Business of Pro-

fessional Baseball," and "The Wrecking of the Federal League" we have narrated the history of the establishment of this monopoly; the extent of its control over this business before and during 1914 and 1915; and the facts with respect to its attack upon the wrecking of the business of plaintiff in error. (*Supra*, pp. 22, 72.) It is unnecessary to repeat this history. It is sufficient to recall that the combination known as ORGANIZED BASEBALL was formed as a result of a bitter trade war between the American League and ORGANIZED BASEBALL during the seasons of 1901-1902. Competition having arisen through the establishment of the American League during those two years, this combination was formed for the purpose of preventing the possibility of any competition thereafter. The NATIONAL AGREEMENT embodies this plan and purpose. It speaks for itself. The subsequent history of the monopoly established thereunder but confirms what the Agreement plainly imports. The uncontradicted evidence in this case shows:

(1) The parties to the NATIONAL AGREEMENT embraced every organization in the United States engaged in the business of providing exhibitions of professional baseball. The entire field of this business was covered by that agreement and by the combination which it effected.

(2) Under the NATIONAL AGREEMENT each league and club parties thereto bound itself to incorporate in all of its contracts with players the provision known as the "Reserve Clause," the effect of which was to give to any employing club a perpetual exclusive right to the service of the player. Every professional ball player in the United States at the time of the execution of the Agreement was in the employ of the parties, i. e., in the employ of the combination known as ORGANIZED BASEBALL.

(3) The purpose of the National Agreement was to eliminate competition, and

(4) To provide an effective weapon for the destruction of any competition which might arise.

(5) That this weapon has been actually used when competition arose, with the result of eliminating such competition.

The question which now arises is whether a combination of the scope and dominated by the purpose and guilty of the acts which have been shown in this case is a monopoly, or an attempt at monopoly, within the meaning of the Sherman Act.

It is submitted that under the decisions of this Court, the proposition is no longer open to doubt that the combination formed under the NATIONAL AGREEMENT and maintained by the parties hereto is a monopoly, within the meaning of the Sherman Act. In *United States vs. American Tobacco Co.*, 221 U. S. 106, MR. CHIEF JUSTICE WHITE, speaking for the Court, laid down certain tests by which the question of whether or not a given combination constitutes a monopoly within the meaning of that act is to be determined. He said:

> "Considering, then, the undisputed facts which we have previously stated, it remains only to determine whether they establish that the acts, contracts, agreements, combinations, etc., which were assailed were of such unusual and wrongful character as to bring them within the prohibitions of the law. That they were, in our opinion, so overwhelmingly results from the undisputed facts that it seems only necessary to refer to the facts as we have stated them to demonstrate the correctness of this conclusion. Indeed, the history of the combination is so replete with the doing of acts which it was the obvious purpose of the statute to forbid, so demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade, not by mere exertion of the ordinary right to con-

tract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business, which were ruthlessly carried out upon the assumption that to work upon the fears or play upon the cupidity of competitors would make success possible. We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations: *a.* By the fact that the very first organization or combination was impelled by a previously existing fierce trade war, evidently inspired by one or more of the minds which brought about and became parties to that combination. *b.* Because, immediately after that combination and the increase of capital which followed, the acts which ensued justify the inference that the intention existed to use the power of the combination as a vantage ground to further monopolize the trade in tobacco by means of trade conflicts designed to injure others, either by driving competitors out of the business or compelling them to become parties to a combination—a purpose whose execution was illustrated by the plug war which ensued and its results, by the snuff war which followed and its results, and by the conflict which immediately followed the entry of the combination in England and the division of the world's business by the two foreign contracts which ensued. *c.* By the ever-present manifestation which is exhibited of a conscious wrongdoing by the form in which the various transactions were embodied from the beginning, ever changing but ever in substance the same. Now the organization of a new company, now the control exerted by the taking of stock in one or another or in several, so as to obscure the result actually attained nevertheless uniform, in their manifestations of the purpose to restrain others and to monopolize and

retain power in the hands of the few who, it would seem, from the beginning contemplated the mastery of the trade which practically followed. *d.* By the gradual absorption of control over all the elements essential to the successful manufacture of tobacco products, and placing such control in the hands of seemingly independent corporations serving as perpetual barriers to the entry of others into the tobacco trade. *e.* By persistent expenditure of millions upon millions of dollars in buying out plants, not for the purpose of utilizing them, but in order to close them up and render them useless for the purposes of trade. *f.* By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders or employees, were required to compete in the future."

The statement of facts with reference to the establishment of the combination involved in this case and its subsequent history has made it plain that every fact which led the court to hold that the American Tobacco Company was a monopoly under the Sherman Act is present in this case. Taking up briefly the testimony here and comparing it with the facts enumerated under the six different groups by MR. CHIEF JUSTICE WHITE above, it will appear that every test laid down by him is completely satisfied—

(*a*) "By the fact that the very first organization or combination was impelled by a previously existing fierce trade war, evidently inspired by one or more of the minds which brought about and became parties to that combination."

(*b*) Because immediately after that combination, which embraced every organization and corporation engaged in the business of providing exhibitions of professional baseball in the United States, every such corporation or

organization continued to operate scrupulously in accordance with that agreement for the purpose of preserving and continuing the monopoly which was established thereby.

(*c*) "By the ever-present manifestation which is exhibited of a conscious wrongdoing by the form in which the various transactions were embodied from the beginning * * * ever in substance the same." The object to be accomplished by the NATIONAL AGREEMENT was the monopolization of professional baseball through the following means (among others); by refraining from all competition among themselves; by respecting the exclusive territorial rights granted by the NATIONAL AGREEMENT to each club and league; by refusing to have any business relations with any independent organization of any kind whatsoever; by regarding such organization as an enemy; by refusing to employ any player who violated his "right of reservation." All of which things were to be done and were actually in practice done for the purpose of retaining the control over the business which the combination under the NATIONAL AGREEMENT had given to ORGANIZED BASEBALL.

(*d*) "By * * * the absorption of control over all elements essential to the successful" conduct of the business, establishing thereby a "perpetual barrier to the entry of others into this business." This "absorption of control over all the elements essential to the business" was complete because every plant in the United States used for the purpose of giving exhibitions of professional baseball was brought within the control of the combination and under the provisions of the NATIONAL AGREEMENT and its practical working no such plant could ever be removed from such control. That is to say, it could never be sold to nor used by any organization outside of the

combination. Further, by the tieing up of every professional baseball player in the United States perpetually with the combination through the "right of reservation" and the enforcement of this control over the players by intimidation, coercion and threats.

(*e*) By meeting any threatened competition with immediate assault from the combination which always wielded its power so as to destroy such competition. So great was the power of ORGANIZED BASEBALL that in only three instances since the execution of the NATIONAL AGREEMENT in 1901 has any competition been attempted. In two instances the competitors were promptly destroyed In the third instance, that of the FEDERAL LEAGUE, a war extending over two years was waged against it by ORGANIZED BASEBALL. When this failed to exterminate it, it was wrecked by ORGANIZED BASEBALL through a conspiracy between it and certain of the FEDERAL LEAGUE'S constituent clubs.

(*f*) By its avowed purpose in wrecking the FEDERAL LEAGUE, to destroy its competition and to further entrench itself behind the barriers which it had erected against competition. The plants of the FEDERAL LEAGUE clubs that were bought by ORGANIZED BASEBALL (with one exception) were dismantled.

The exact parallel of facts in the two cases renders applicable the language of MR. CHIEF JUSTICE WHITE in the case of the *United States vs. The American Tobacco Company, supra:*

> "Indeed when the results of the undisputed proof which we have stated are fully apprehended and the wrongful acts which they exhibit are considered there comes inevitably to the mind the conviction that it was the danger which it was seen would arise to individual liberty and public well-being from acts

like those which this record exhibits which led the legislative mind to conceive and to enact the Anti-Trust Act, considerations which also serve to clearly demonstrate that the combination here assailed is within the law as to leave no doubt that it is our plain duty to apply its prohibitions" (pages 181-183).

No denial can be made under the undisputed facts in this case of the charge that the combination which defendants in error control is a monopoly. This undisputed monopoly is attempted to be defended by them upon the ground that it is justified by the conditions which attend *their* business. It is asserted that their gigantic business cannot be carried on except in the way they have conducted it. It is, however, a rather novel defence of a monopoly, that it is only by such means that a particular set of men can carry on a given business in the way it pleases them to conduct it, yet this is what the contention of defendants in error amounts to. They say that they want to run their business so that every baseball league and club in the United States shall be under one organization, subject to one control and governed by one set of rules, in order that all competition between the various leagues and clubs as business concerns may be removed. They assert in effect that such a combination cannot be established except in the way they have done it. The conclusion which they seek to have drawn from these premises is that such a combination therefore cannot be within the condemnation of the Sherman Act.

The justification here is the unique one that defendants in error cannot attain their own selfish objects without creating a monopoly, and therefore the law should not be held to condemn this monopoly. This contention raises the question and only the question of the

wisdom of the policy of prohibiting a monopoly or an attempt to monopolize. Defendants in error are simply finding fault with a law because they do not like the consequences following a violation of it.

That we have not misapprehended the argument which defendants in error have advanced, we quote the following from their brief, filed in the Court of Appeals of the District, wherein one of the means by which the monopoly of ORGANIZED BASEBALL has been effected is discussed:

> "In reviewing the operation of the contract system (the legal effect of which will presently be discussed), the Court will bear in mind that competitive sport necessarily involves *a high degree of organization.* The individual player on a team *must be subject* to rigid discipline (Record, p. 123); *each team must be protected against the seduction of its players by other teams;* the regulation of public games must be such as to insure decency and order; and the conditions under which league championships and world championships can be won *must be prescribed with military precision.* In the commercial world the individual is the unit and all presumptions are in favor of his freedom of action. *In the world of professional sport, as in the army, the unit is not the individual, but* THE ORGANIZATION, *and there can be only such individual freedom as is consistent with the good of the whole.*" (Italics and small caps ours.)

Here four reasons for the monopoly of ORGANIZED BASEBALL are suggested, (1) that the business requires a high degree of organization; (2) each *team* must be protected against the seduction of its players by "other teams"; (3) the preservation of discipline; (4) the unit of the business is *not the individual,* but THE ORGANIZATION. The fourth of these reasons exposes the fallacy of the entire argument. It is natural to inquire what defendants in error mean by "THE ORGANIZATION" being

"the unit." Do they mean to contend that in order to conduct the *business* of providing exhibitions of professional baseball, every concern in that business in the whole country must be brought into one gigantic combination? But remarkable as it may seem, this in effect is exactly what they contend. They deny that anyone should have the right to enter this business except ORGANIZED BASEBALL. What earthly meaning can there be in their language if it does not import that ORGANIZED BASEBALL which embraces and was intended to embrace the entire baseball enterprise of the United States, is "THE ORGANIZATION" which is "THE UNIT" of the business? If they concede that the business can be carried on where there is competition with ORGANIZED BASEBALL then they must concede that it can be carried on if that great system is broken into parts. If they deny the latter then they must deny the former. It is this inevitable consequence of their argument which has led them to take the long leap from the natural business unit of *the league, to the unit of* THE ORGANIZATION known as ORGANIZED BASEBALL, and to liken it to the army of a nation.

It goes without saying, of course, that the desire of those who want to monopolize is always to produce just exactly such a unit, that is, to bring every part of the business under the domination of a single power, but it has never been argued before that individuals or corporations in private business are entitled to take the scope of their greed as "the unit" of a business and thereby remove it from the condemnation of a law which prohibits that very unification.

It is, of course, true that this business, like every other requires some internal organization. A general view of the way in which the business of baseball has been conducted has been given in the early part of this brief and a reference to it will explain why it is that a league is

essential to the operation of the business. Put in a sentence, the reason is that one team of baseball players must have others to play with over a definite and prearranged schedule in order to arouse the interest of the public and attract its patronage. But defendants in error have never been able to explain why any organization larger than a league is necessary except that such larger organization in the business of baseball, as elsewhere, extends the control of those who dominate that organization and enables them to eliminate and prevent competition. The suggestion that there is anything peculiar about baseball requiring a larger unit than a league is not supported by a scintilla of testimony.

In the extract quoted from the brief of defendants in error in the Court of Appeals there is given as one of the reasons for "the organization," *i. e.*, ORGANIZED BASEBALL, that each team must be protected against the seduction of its players by other teams. The player upon a baseball team renders service to the club employing him just as any other employee of a business concern. There is no more reason for one organization to corral and tie up all the baseball players in the United States than there is for a manufacturer of glass to corral and tie up all of the glassblowers, or a publishing house the printers and engravers, and so on throughout all the branches of industry. And at this point it is necessary to distinguish between an ordinary contract of employment for a definite period of years and the "right of reservation" as it has been elaborated and applied by ORGANIZED BASEBALL. If a club in an independent league makes a contract for a period of two years, for example, with a player at a definite salary, that contract is a legal contract and if the other provisions are mutual it may be enforced in equity and at law. Where such club employs a limited number of players and not more than there is reasonable

necessity for, the business is then carried on in a normal way and everybody under the law is bound to respect that contract,—the player, the club and third persons. It may be that within one league, constituting as it does an essential form of organization in this business, certain restrictive agreements with respect to negotiating with the players upon the teams of other clubs would be lawful, although it is difficult to see why any such understanding even among the clubs of the same league would be necessary if a definite, binding contract were made with the player, because the other clubs of the league would be prevented from interfering with the contractual rights of the employing club just as any other third party would be. *But it is important to emphasize that no such situation is involved in this case.* In ORGANIZED BASEBALL through the NATIONAL AGREEMENT and the practice thereunder every league and club in the United States is banded together in such a way that even without a contract with a player the control over him is assured by the club that last employed him and the possibility of his employment by any other baseball organization in the United States is absolutely foreclosed. If, following the usual practice in ordinary business, a particular club, as above explained, desired the actual services of a player it would only be necessary to make a definite contract running over a definite period with the player and that contract would have the protection of the law against any interference from any other persons whoever they might be. It is for the reason that ORGANIZED BASEBALL wants the control over the players retained regardless of whether their services are desired or not that this "elaborate system of contracts," as it is described by defendants in error, establishing the so-called right of reservation, is adopted. The only purpose of tieing up the player in any such way is to assure to ORGANIZED BASEBALL perpetual control over the entire number of known

and ascertained professional baseball players in the United States. When a player who has been under contract has served for the period mentioned therein he should of course be entitled to contract with anyone he pleases. This is true in every other business in the United States. ORGANIZED BASEBALL, however, through the NATIONAL AGREEMENT, has declared that no player in the United States can enjoy that ordinary legal right. It has required that every organization subject to the terms of the NATIONAL AGREEMENT shall incorporate in all of its contracts with players the "reservation clause," which is nothing more than a provision that at the expiration of the player's definite time of service under his contract he shall thereafter not be permitted to make a contract with anybody else except his former employer unless that former employer gives him the right to seek other employment.

This compulsory service to the last employer and exclusion from employment by any other baseball concern in the United States is effected,—

*First,* by observing strictly the rule prescribed by the NATIONAL AGREEMENT, that the "right of reservation" in the last employer shall be respected by all of the clubs and leagues in ORGANIZED BASEBALL, which we have seen embraces the whole baseball business of the United States. This strict observance of the reserve clause is assured by the certain infliction of disastrous penalties fixed by the agreement upon any club violating it. The NATIONAL AGREEMENT specifically and in terms prohibits any clubs in ORGANIZED BASEBALL from playing with any club that harbors a player that has not respected his reservation.

*Secondly,* by the penalty upon any player, who violates the right of reservation, of exclusion forever from employment by any club in ORGANIZED BASEBALL.

It is unnecessary to argue whether or not a system of this sort works beneficial results from the standpoint of business profits to the individual leagues and clubs in ORGANIZED BASEBALL. It is doubtful whether it does. But from the standpoint of the public interest and public welfare and the policy embodied in the Sherman Act, there is no possibility of question that it establishes a most vicious restriction upon ordinary human rights.

In its opinion in this case the Court of Appeals of the District, speaking of the control which ORGANIZED BASEBALL exercises over its players, says (Record, pp. 509 and 510):

> "The number of players which each club was permitted to employ was limited to twenty-two. It is admitted that this was a reasonable number and that none of the clubs retained more players than it needed. The number of skilled players available did not equal the demand, and clubs within the appellant leagues were competing among themselves for first-class players. One of the directors of the appellee admitted that if his club had to compete for public favor with the appellants it undoubtedly would have been driven to the ranks of the latter for many of its players. If the reserve clause did not exist the highly skillful players would be absorbed by the more wealthy clubs, and thus some clubs in the league would so far outstrip others in playing ability that the contests between the superior and inferior clubs would be uninteresting and the public would refuse to patronize them. By means of the reserve clause and provisions in the rules and regulations, said one witness, the clubs in the National and American Leagues are more evenly balanced, the contests between them are made attractive to the patrons of the game, and the success of the clubs more certain. The reserve clause and the publication of the ineligible lists, together with other restrictive provisions, had the effect of deterring players from violating their contracts, and

hence the Federal League and its constitutent clubs, of which the appellee was one, were unable to obtain players who had contracts *with the appellants;* in other words, these things had the intended effect, viz., of preventing players from disregarding their obligations. On these provisions, all having for their purpose the preservation of each club of its necessary quota, and no more, of players—rests the gravamen of appellee's case. It must be obvious that the restrictions thus imposed relate directly to the conservation of the personnel of the clubs, and did not directly affect the movement of the appellee in interstate commerce. Whatever effect, if any, they had was incidental, and therefore did not offend against the statute."

It will be observed that the Court bases its decision upon a consideration of what the clubs in the two major leagues do with respect to the active players employed by them upon their respective teams. This shuts out of view, we submit with great deference to the Court of Appeals, every substantial feature of the case. By restricting its consideration to the facts recited in its opinion, its decision is made to depend upon a mere fragment of the case which gives no indication whatever of the almost endless ramifications of the stupendous system which defendants in error have erected for the control, not alone of the players upon the clubs of the two leagues mentioned in the opinion, *but for the control of every business enterprise and of every professional player upon every club in every league in the whole United States.*

Plaintiff in error, it is true, has never claimed that the employment by the clubs in the two major leagues of twenty-five men is an excessive number. The number required upon the field to play a game is nine, but accidents happen to players and substitutes must be at hand. Pitchers also have to be relieved, and given rest. These

conditions make it reasonable to have ready at hand a greater number than nine men, and, as we have said, twenty-five for each club is not claimed to be excessive. Defendants in error have never contended that the mere employment of this number by each club is a violation of the Sherman Act. To decide that question is to decide one not presented in this case.

Our contention is that when in addition to the reasonable number of players employed upon the particular clubs, these clubs enter into a combination among themselves to control every ballplayer in the country and to prevent either the club employing him or the player from ever at any time having any dealings of any kind whatever with any club outside that combination, and when this combination is deliberately extended so as to embrace every club and to gain control over every player in the country, and this is done for the purpose of preventing any new organization from coming into existence and attempting competition, then they have done a thing that unmistakably amounts to a monopolizing of this business.

Of course this action is not brought to redress any wrongs done to the clubs in Organized Baseball by compelling them to remain in that combination or to any player who may have been the victim of the peonage system which it enforced. It is the injury inflicted upon plaintiff in error by the monopoly which was maintained by means of this coercion of both clubs and players and other unlawful practices which forms the basis of this action.

When the FEDERAL LEAGUE decided to begin business they were confronted by a situation where upon the one hand every baseball enterprise in the United States was forbidden to have any business relation of any kind or

character with it or any of its constituent clubs. If the FEDERAL LEAGUE, for illustration, desired to negotiate with any other league in the United States looking to some arrangement for the use of its ball parks, or the exchange of players, no matter how satisfactory the arrangement might be to both leagues, and to all of their constituent clubs, no such arrangement could be made, because all these other leagues in the United States were at the time and had been since 1903 a part of ORGANIZED BASEBALL and that combination absolutely forbade all dealings of every kind with an independent organization. The monopoly was absolute from its inception and every conceivable device was then provided for perpetually maintaining its scope and power unimpaired.

As was the case with the separate business enterprises forming a part of ORGANIZED BASEBALL, so it was with respect to the players. As that combination had for ten years controlled every employing club in the country necessarily every known and ascertained professional player in the country was at its mercy. Employment could only be found in ORGANIZED BASEBALL and upon the terms that it imposed. These terms included the reserve clause, or right of reservation, the result of which was to prevent any player who had ever been employed at any time by any club in ORGANIZED BASEBALL (and necessarily *all* known players had been at the time the FEDERAL LEAGUE was formed employed by ORGANIZED BASEBALL) from accepting employment from any independent club or league which might come into existence except upon the penalty of never being permitted again to accept employment in any club or league of ORGANIZED BASEBALL. With this certainty of exclusion from the entire existing baseball field in the United States, of course it was a matter of the greatest difficulty that any player could be found who would negotiate with any proposed independent organization.

It has also been shown that defendants in error were not content to rely alone upon the power of their monopoly to stifle competition, for it also appears that the moment the FEDERAL LEAGUE was organized that ORGANIZED BASEBALL began the fiercest sort of hostilities against it for the purpose of destroying it, and this relentless warfare was continued throughout the existence of the league. It would certainly be difficult to find in the annals of business rivalry a more brazen announcement of a determination to slaughter a competitor than is found in the interview given to the press of the country by BYRON BANCROFT JOHNSON, one of the defendants in error, at the very inception of the FEDERAL LEAGUE. This interview, it is no exaggeration to say, evinces a spirit of sheer commercial vandalism. And the record is replete with evidences of this attitude of these defendants in error throughout the existence of the FEDERAL LEAGUE (Record, pp. 198, 199).

But the FEDERAL LEAGUE even against all these assaults held its ground for two years, and at the end of this period was still a going concern. It was then that defendants in error decided upon a direct invasion of the league in the manner before described. They induced the owners of certain clubs in the league to betray their associates for a money consideration. They knew that if these five clubs were bought off the other clubs in the league would be set adrift and would perish. It was in this manner that the FEDERAL LEAGUE was wrecked.

It was out of all these facts that this suit arose, and the simple question is whether or not the Sherman Act affords a remedy for wrongs inflicted in the manner described.

But whatever the motives of the persons who directed the combination and consolidation of all of the baseball

enterprises in the United States through the NATIONAL AGREEMENT of September 11th, 1903, and whatever may have been the motive of the parties to that agreement in actually observing its provisions and effectuating its manifest purpose, the inevitable consequence has been to produce a monopoly and to restrain trade in this branch of commerce among the several States, and these parties who have thus carried out the purpose of the combination are of course to be charged with the reasonable and probable consequences of their acts.

In *Thomsen vs. Cayser,* 243 U. S. 66, 86, the Court, speaking through Mr. Justice McKenna, said, with respect to a contention similar to that urged by defendants in error:

> "The argument that is employed to sustain the contention is one that has been addressed to this Court in all of the cases, and we omit an extended consideration of it. It terminates, as it has always terminated, in the assertion that the particular combination involved promoted trade, did not restrain it and it was a beneficial and not a detrimental agency of commerce.
>
> "We have already seen that a combination is not excused because it was induced by good motives or produced good results, and yet such is the justification of the defendants."

The numerous decisions upon the question of monopoly under the Sherman Act are well summarized by the Court, speaking through MR. JUSTICE DAY, in *Eastern States Lumber Association vs. The United States,* 234 U. S. 600, 611:

> "It [the Sherman Act] covered any illegal means by which interstate commerce is restrained, whether by unlawful combinations of capital or unlawful combinations of labor; and we think also whether the restraint be occasioned by unlawful contracts, trusts,

pooling arrangements, blacklists, boycotts, coercion, threats, intimidation, and whether these be made effective, in whole or in part, by acts, words or printed matter."

There is scarcely a single means through which a monopoly may be obtained or a restraint of trade effected, enumerated by the Court in the above quotation which was not employed by defendants in error as has been shown in the complete review of the testimony contained in the earlier part of this brief.

We cite below the cases which we respectfully submit together with those heretofore cited show conclusively that the combination known as ORGANIZED BASEBALL and controlled by defendants in error is a monopoly:

*Standard Oil Co. vs. United States*, 221 U. S. 1.
*Standard San. Mfg. Co. vs. United States*, 236 U. S. 20.
*United States vs. Union Pacific Ry. Co.*, 226 U. S. 61.
*Nash vs. United States*, 229 U. S. 373.

The trial Court instructed the jury as a matter of law (Record, p. 496) that "the acts of the defendants alleged and proved, by way of maintaining the system of ORGANIZED BASEBALL, constituted in law an attempt to monopolize the business of competitive baseball exhibitions for profit, and as an inseparable part thereof, to monopolize commerce between the States, and were done in violation of said anti-trust laws." *The facts with reference to what defendants in error did and upon which the Court held that an attempt to monopolize had been established were undisputed.* They never have been disputed and of course could not be disputed because the proof of them came from defendants in error themselves. Consequently the question as to whether or not ORGANIZED BASEBALL

had been guilty of an attempt to monopolize their business was a pure question of law and was properly determined by the Court.

In *Thomsen vs. Cayser,* supra, the Court said:

> "The next contention is that the fact of combination should have been submitted to the jury and not decided as a matter of law by the court. We are unable to assent. There was no conflict in the testimony, and nothing therefore for the jury to pass upon; and the court properly assumed the decision of what was done and its legal effect" (page 88).

The trial Court, of course, left to the jury the question of whether or not plaintiff in error was injured by this attempt to monopolize, and carefully instructed the jury that this was a question of fact which they alone were to determine from the evidence.

III.

**There is No Testimony in This Case Legally Sufficient to Show That the Plaintiff in Error Has Ever Done Any Act or Thing to Waive or in Any Degree Prejudice Its Right to Recover Damages Under the Sherman Act for the Injury to Its Business Caused by the Wrecking of the Federal League by the Defendants in Error for the Purpose of Maintaining Its Monopoly and to Further Its Conspiracy in Restraint of Trade and Commerce Among the Several States.**

Defendants in error assert that the presence of Mr. Rasin, the President of plaintiff in error, and Colonel Janney, its attorney, at the meeting at the Waldorf Hotel on the evening of December 17th, 1915, at which the matter of perfecting the details of the tentative agreement between Organized Baseball and Gilmore and his confederates a few days before on December

13th, was under consideration, is sufficient to defeat the right of action in this case. We have stated at length in the earlier part of this brief all the facts regarding the presence of these two gentlemen at this meeting. It has been shown that they were called to New York by a telegram from GILMORE received on December 16th, three days after the tentative agreement *putting an end to the* FEDERAL LEAGUE *had been executed*, requesting them to come there on important business. They, together with Mr. HANLON, who, in the telegram was asked to be present, took the midnight train from Baltimore to New York and arrived at the Biltmore Hotel on the morning of December 17th. There Mr. RASIN and COL. JANNEY saw GILMORE, who informed them that the tentative agreement of December 13th had been made. *Up to this time neither Messrs.* RASIN *and* HANLON *nor* COL. JANNEY *had heard a word about any agreement or negotiations of any kind with* ORGANIZED BASEBALL *or with any of its constituent members.* Immediately upon learning that an agreement had been made whereby certain clubs in the league controlled by GILMORE and his confederates had sold out to ORGANIZED BASEBALL, the gentlemen from Baltimore denounced GILMORE and his confederates for their treachery and declared that plaintiff in error would not be bound thereby. *The plaintiff in error was not mentioned in the tentative agreement and it was not intended that it should be included in the negotiations with* ORGANIZED BASEBALL. The facts showing how Mr. RASIN and COL. JANNEY happened to be present at the Waldorf meeting on the evening of the 17th are fully and frankly given in their testimony hereinbefore set out and need not be repeated. No meeting of the stockholders or Board of Directors or Executive Committe of plaintiff in error was held between November 23rd, 1915, and January 27th, 1916, and consequently no matter relating to any contract or other negotiations with ORGANIZED

Baseball could possibly have come before any of those bodies before the latter date. On January 27th, 1916, a meeting of the stockholders was held at which the President, Mr. Rasin, submitted a report, which, for the first time, informed them that an agreement had been entered into between certain other clubs of the Federal League and Organized Baseball whereby the Federal League had been wrecked and the clubs who were parties to the Peace Agreement were to be dismantled. After this report a resolution was adopted authorizing the Board of Directors to take such steps as it might think necessary to protect the rights of plaintiff in error. In accordance with this resolution this suit was brought under the Anti-Trust Laws.

Independent of any legal question with respect to the authority of Mr. Rasin or Col. Janney to bind plaintiff in error in any such transaction as that discussed in New York on December 17th, the testimony is clear that what they did, did not and could not mislead in the slightest degree anyone into believing that they were even attempting to represent plaintiff in error in connection with a conspiracy to wreck the Federal League. If by any possibility, however, anyone was misled by anything said or done by them on December 17th the testimony shows without contradiction that prior to the consummation of what has been called the Peace Agreement on December 22nd, and prior to the doing of any act or thing in pursuance of that agreement, the parties thereto were unequivocally informed that plaintiff in error objected to the making and execution of it and intended to take legal proceeding to redress any wrong done it as a consequences thereof. (Supra, p. 87 et seq.)

The contention of defendants in error upon this point, as stated in their brief in the Court of Appeals, is:

> "If they [meaning Mr. RASIN and COL. JANNEY] had authority, that is the end of the appellee's case. If they had not such authority, it was Rasin's duty to repudiate or correct statements of Gilmore and Sinclair made in response to Herrmann's questions and acted upon by the meeting. Having failed to make such correction or repudiation, it was his duty immediately upon his return from Baltimore to report to his club what had been and what was to be done and to ask for instructions. * * * Had he communicated it, all the trouble which has ensued would have been avoided. His knowledge was the knowledge of the appellee. If the appellee was in fact innocent, so were the appellants. Where loss must fall upon one of two innocent persons it will be allowed to fall on the person whose representative made the loss possible."

The contention of defendants in error comes to this: that they are to be relieved from liability from what, for the purposes of the discussion of this proposition, must be taken to be a conspiracy in violation of the Sherman Act because they believed that there was *one more* member of that conspiracy than there happened actually to be. If breaking up the FEDERAL LEAGUE in the manner shown by the evidence was a violation of the Sherman Act and an illegal step in perpetrating the monopoly of defendants in error, then so far as the violation of law is concerned it would make no difference whether the plaintiff in error was a party to it or not. Defendants in error wrecked the league and as a consequence the business of plaintiff in error, and intended so to do, and the only effect of the latter's joining the conspiracy would have been to subject an additional party to prosecution or liability under the Sherman Act. It is difficult to see how it can be contended that defendants in error could be relieved from liability here because they happen to have been mistaken in supposing that plaintiff in error was a party to their conspiracy, when the only result of

the correctness of that supposition would have been the more perfect accomplishment of an unlawful object.

But the contention of defendants in error even goes further. They maintain that all right of plaintiff in error to recover for any injury growing out of the conspiracy to wreck its business is defeated because defendants in error say that they thought or imagined that plaintiff in error had a representative in that meeting who was there for the purpose of making it a party to the unlawful conspiracy which they were then carrying out. Even if Mr. RASIN and COL. JANNEY had no authority to represent plaintiff in error at the meeting and for the purpose for which that meeting was held, defendants in error further contend that plaintiff in error is nevertheless made a party to the conspiracy and its right to maintain this suit defeated, because it is said Mr. GILMORE made a statement in Mr. RASIN's presence that he (GILMORE) had authority to represent the FEDERAL LEAGUE (not plaintiff in error) in the transaction with reference to its extermination, and as Mr. RASIN did not report this back to plaintiff in error, so that it could repudiate GILMORE's statement, it is bound by that statement, and GILMORE must be deemed its agent authorized to bind it to the agreement.

In other words, their contention is, that the plaintiff in error can lose its entire property and assets by the unlawful acts of defendants in error, and be deprived of all redress for the wrong, because at a meeting it never heard of, and where a transaction was being discussed of which it had no notice or knowledge, GILMORE having falsely stated in the presence of Mr. RASIN that he represented the FEDERAL LEAGUE (a separate corporation from plaintiff in error), it became the duty of Mr. RASIN to report GILMORE's statement to plaintiff in error, and

his failure to do so makes it a party to the criminal conspiracy defendants in error were then engaged in carrying out, although neither Mr. RASIN nor anyone else ever had a *scintilla* of authority to represent it in any such transaction.

Was it ever heard of before that a corporation could be bound in any matter, of any nature or kind whatsoever, no matter how trivial, by such a process of reasoning. Much less can it in such a way be stripped of every dollar of its assets and made at the same time a party to a violation of a penal law.

It is an elementary principle of law, of course, that no officer of a corporation has the power to do any act on behalf of the corporation which results in divesting it of the power to exercise its corporate franchise or to fulfill the purpose of its existence. In the case at bar, the contention of defendants in error is not only opposed to this elementary principle but it goes further and maintains that the president has the power to destroy the corporation of which he is president as a part of an unlawful conspiracy to monopolize interstate commerce in violation of the Sherman Act. In other words, they assert that the president of the corporation has not only the power to wreck it but the power to wreck it in such a way as to make the act of destruction a violation of law.

In *De La Vergne Co. vs. German Savings Inst.*, 175 U. S. 40, 53, where the president of a corporation had undertaken to sell on its behalf its entire property and assets, this Court, after pointing out various manifest illegalities in the contract, held that it was void because of the lack of any authority on the part of the president to enter into a contract of that nature. The Court says:

> "In addition to this, however, there was no corporate action taken authorizing any such conveyance

by the corporation, and such conveyance would not under the laws of Illinois which conform in this particular to the general law, be within the power of the stockholders, even though they all signed it, without formal action at a meeting held for that purpose. Sellers vs. Greer, 172 Illinois 549; Hopkins vs. Roseclare Lead Co., 72 Illinois 373; Humphreys vs. McKissock, 140 U. S. 304, 312; Allemong vs. Simmons, 124 Indiana 199; Smith vs. Hurd, 12 Metc. (Mass.) 371, 385; England vs. Dearborn, 141 Mass. 590; Cook on Stockholders, 709.

"It is true that the president of the Consolidated Company assumed to sign the contract as president, and to bind the company, but it is scarcely necessary to say that the president of a corporation has no power as such to make a general conveyance of the assets of the corporation without at least the assent of the board of directors. England vs. Dearborn, 141 Mass. 590; Titus vs. Cairo & Fulton Railroad, 37 N. J. Law 98, 102; McCullough vs. Moss, 5 Denio 567; Fulton Bank vs. New York &c. Canal Co., 4 Paige 127, 134; Walworth County Bank vs. Farmers' Loan & Trust Co., 14 Wisconsin 325; Stokes vs. N. J. Pottery Co., 45 N. J. Law 237; Morawetz on Corp., 537; 4 Thomp. on Corp. 4622."

No one disputes the elementary principle of law that any act of an officer of the corporation *within the scope of his authority* is binding upon the corporation, even though the officer may commit a fraud while doing such act. This is all that is held in the authorities cited by defendants in error. The FEDERAL LEAGUE, as its charter shows (Record, 79 and 80), was formed for the purpose of maintaining a league of clubs—that is, a baseball business unit. That charter authorizes the FEDERAL LEAGUE to sell franchises to clubs in cities in order to make up its circuit. Plaintiff in error was formed for the purpose of obtaining one of these franchises and becoming a member of the circuit of the FEDERAL LEAGUE.

The franchise granted to plaintiff in error and to all the other clubs by the FEDERAL LEAGUE provided in its *ninth* clause (Record, 163):

> "That in consideration of the covenants of the licensee as aforesaid the league agrees to operate and conduct competitive baseball games among the constituent members of the league; to fix, by rules and regulations, the conduct thereof; to employ, transport and pay competent and impartial umpires therefor; to arrange a schedule of games annually and promulgate the same to the constituent members; to receive and collect from each constituent member of the league a uniform percentage out of the receipts of each member, and to impartially enforce the rules and regulations of the league."

It is manifest that the continued existence of both the FEDERAL LEAGUE and of each of the various clubs was guaranteed under the form of league organization. Entirely independent of the Sherman Act the act of the other constituent members who sold out to ORGANIZED BASEBALL was the breach of a fundamental condition in the agreement among them flowing not only from the express language of their franchises but also from the plain implication of their relationship. The FEDERAL LEAGUE could not go out of business without the consent of all the corporate entities to whom franchises had been sold. There was no power in its officers, directors or stockholders, to destroy the business of that corporation without subjecting it to liability to plaintiff in error and to all other clubs constituting its circuit. And it is plain, on the other hand, that plaintiff in error could not violate its franchises and its agreement with the FEDERAL LEAGUE and the other clubs without subjecting itself to similar liability. Entirely apart from the evidence, which shows without contradiction or doubt, that none of the parties to the Peace Agreement ever supposed that either Mr. RASIN or COLONEL JANNEY was attempting or purporting to repre-

sent plaintiff in error for the purpose of binding it by any agreement with ORGANIZED BASEBALL, it is clear that the parties to the Peace Agreement knew throughout the time when that agreement was being discussed that neither of the gentlemen mentioned there had or could have any authority to represent plaintiff in error in that matter. That this, in fact, was the understanding of everyone who had been connected with baseball is shown by a decision of the NATIONAL COMMISSION (Record, p. 276), handed down on March 2, 1916, about two months after the meeting in question. This decision involved certain rights of a league known as the "III" League, and the question presented was whether the president of a league in ORGANIZED BASEBALL could change its circuit and interfere with the normal operation of the clubs of the league. In passing upon this question the Commission said:

> "Moline and Davenport, which have 'III' franchises, are each less than five miles from Rock Island and hence their territorial prerogative cannot be infringed upon without subjecting them to liability to serious damage in their property rights. *Injury to every club in the 'III' League is possible if the Central Association should be permitted to operate within five miles of Davenport and Moline because of the competition that will result.*
>
> *"The Commission cannot seriously consider the contention that a league president can by word of mouth or in writing deprive his league of any of its vested rights or privileges unless he is specifically authorized by his league to do so."*

This decision is over the signature of the members of the NATIONAL COMMISSION, and all of them are individual defendants in this action.

Of course, these gentlemen knew that if a league president, under the form of organization maintained by ORGANIZED BASEBALL, did not have authority to do anything which would in the slightest degree *permit of any competition* with any of the clubs in a league of ORGANIZED BASEBALL, they certainly knew that a club president or board of managers of the FEDERAL LEAGUE did not have authority to enter into an agreement the effect of which would not only annihilate the league, but every club in it, regardless of whether or not they were parties to it or whether they were paid any compensation for such destruction.

The plaintiff in error is a Maryland corporation, and at the time of the meeting at the Waldorf and throughout the time when the wrongs complained of were being committed it was, of course, subject to the laws of Maryland fixing its powers. There was no power in the corporation at all, i. e., in its officers, directors or stockholders, to dispose of its assets and wind up its business *by selling out to a foreign corporation.*

Article 23, Sec. 32 of the Code of Public General Laws of Maryland, in force at the time in question, only permits a corporation to sell its entire assets to *another Maryland corporation,* and even in such case requires a special meeting of the stockholders, called upon special notice, and the approval by a two-thirds vote on their part of formal articles of agreement effecting such sale.

Upon this question, therefore, we submit: *First,* that there is not a scintilla of evidence in this case that anybody was misled by anything said or done at the meeting in New York into believing that either Mr. RASIN or COLONEL JANNEY represented plaintiff in error or was attempting to bind it to the agreement which was then in course of preparation; *second,* even if anybody had been

*misled* on that evening, the testimony shows conclusively that prior to the execution of the agreement the parties thereto *were explicity informed* of the objection of plaintiff in error to that agreement and of their intention to seek redress for the injury which resulted from the illegal conspiracy of which that agreement was a part; *third*, that neither Mr. RASIN nor COLONEL JANNEY had any authority to represent plaintiff in error in connection with the agreement, nor the transaction of which it was a part; and, no matter whether defendants in error were misled or not, plaintiff in error cannot be prejudiced by any unauthorized act or omission on the part of these two gentlemen.

The contention of defendants in error with respect to the presence of Mr. RASIN and COLONEL JANNEY was presented by an exception to the ruling of the trial Court upon their offer of the entire minutes of the meeting at the Waldorf, and also by their third, fourth and fifth prayers (Record, 489-490).

So far as the exception to the offer of the minutes as an entirety is concerned, it will be observed that the trial Court admitted certain portions of the minutes which were offered by the defendants in error, but refused to admit them as an entirety, as upon reading them he found certain portions which were irrelevant. It will be noted, however, that each specific portion of the minutes offered was admitted by the Court (Record, 466). However, the Court, in ruling upon the prayers, told the jury that plaintiff in error could not be bound by anything said or done at the meeting in question, because no one had authority to speak or act for it on that occasion. This ruling, we submit, was entirely correct, as shown by the aforegoing discussion.

*The Waldorf Minutes.*

Defendants in error printed as an appendix to their brief in the Court of Appeals, the minutes of the Waldorf meeting, and probably they will be reprinted in their brief in this Court. We have not thought it necessary to discuss those minutes, because, of course, they are not a part of the record, being in the first place specifically excluded by the lower Court as an entirety, and in the second place they were not offered by defendants in error in such a way as to make them a part of the record, even for the purpose of having the question of their relevancy determined. However, there is no necessity to raise any question of form, because if the minutes themselves are examined in case they are reprinted in the brief of defendants in error as they were in the Court of Appeals, it will be found that they only confirm what the testimony in the case already abundantly shows, viz.: that nothing was said there by either Mr. RASIN or COL. JANNEY to mislead anyone, but upon the contrary it was specifically stated and clearly understood by everyone that plaintiff in error was not a party to the tentative agreement of December 13th, which was then being discussed, and that no one was purporting to represent it in the negotiations then in progress. The Court will see that the purpose of the meeting in question was to perfect a tentative agreement that had already been entered into.

Mr. SINCLAIR at the opening of the meeting said with reference to the tentative agreement:

> "The Pittsburgh Club was not represented at that meeting [December 13th] *and we did not take into consideration the Baltimore Club. Nothing was said about the Baltimore situation.*"

The meeting then went on to discuss the tentative agreement, and during this discussion the following colloquy occurred:

"Mr. HEMPSTEAD: In other words, there are other things besides that particular agreement, but if the other things are satisfactory, are you still satisfied with your memorandum?

Mr. SINCLAIR: I think the substance of it, yes.

Mr. HEMPSTEAD: There is no question then, so far as they go, and I am speaking of just as far as they go, you are satisfied?

Mr. SINCLAIR: As far as a portion of them go, I am satisfied. *I was not in a position to speak for Pittsburgh at that time, but we have authority now to speak for them.*

Mr. HEMPSTEAD: We are sort of wasting time here, because, *if you are satisfied so far as they go, the question does not arise about the Baltimore Club yet.*"

The meeting then proceeded to discuss further the provisions of the tentative agreement.

After this discussion had proceeded for quite a while COL. JANNEY came in and made a statement with reference to getting a major league franchise for the City of Baltimore. This part of the minutes of the meeting was admitted in evidence by the Court, and is found in the Record in this case at page 345. In the very opening paragraph of his statement COL. JANNEY says:

"Mr. STEWART S. JANNEY: We feel just as I suppose everyone feels that peace is the very best proposition in baseball and for baseball. We are all willing to concede that, and we hope it will come about. There is in the proposal which has been adopted, *and which has been signed by certain parties—the situation in Baltimore is not touched upon,* and it seems to me important in several aspects. In the first place, Baltimore has a population of seven hundred and fifty or eight hundred thousand people, including the suburbs, which are not included, however, in the city limits, and therefore do not appear in the census."

Again, near the opening in the fifth paragraph, COL. JANNEY repeats that "*Baltimore is not mentioned in the proposals, that you have heretofore considered,* etc."

We have already made clear in the statement of facts in this case that COL. JANNEY went into this meeting as a private citizen of Baltimore, not as a representative of the plaintiff in error and that his statement at the meeting shows that he clearly indicated that he was there in the former and not in the latter capacity. There was no statement at the meeting, even by GILMORE or SINCLAIR, that they represented the plaintiff in error in any of the negotiations that they were carrying on with ORGANIZED BASEBALL. All that *these minutes purport to show is that they represented the* FEDERAL LEAGUE. The minutes as an entirety show not only that everybody knew plaintiff in error was not a party to the agreement under discussion there, but they further show that it was intentionally and knowingly ignored in all the negotiations respecting the Peace Agreement.

It also appears that even if it had been groundlessly assumed by anyone that plaintiff in error was represented at the Waldorf meeting, no final agreement was reached at that time between ORGANIZED BASEBALL and GILMORE and his associates, and was not so reached until December 22nd, and whatever may have been anybody's impression at that time, all parties to the agreement were definitely, specifically and unequivocally informed before the Peace Agreement was executed that plaintiff in error objected to that agreement, protested against its execution and would not be a party to it.

The following colloquy taken from the minutes which occurred at the very end of the meeting shows that no further agreement was reached on the night of the 17th:

"CHAIRMAN HERRMANN: In view of the fact that the newspaper men have waited to get the results of this meeting, and what has occurred, we have agreed, gentlemen, and I make this suggestion before any of you leave the room, that it is quite natural the newspaper men will want to know what has been done, and what the result of this meeting has been, and we have authorized Mr. Heydler to speak for all of us and to give out in substance, what we have done this evening. If any newspaper man comes to me, I will simply say, 'See Mr. Heydler, and he will give you the result of the meeting.' Now, in a general way, what are you going to say, Mr. Heydler?

SECRETARY HEYDLER: *I am not going to say a thing about anything that has been agreed upon, for the very reason you cannot agree on anything.* You are going to the Court, and apparently——

Mr. LLOYD: Are you going to tell them that?

Mr. HEYDLER: Yes, sir."

The minutes also show that defendants in error here did not act innocently or without knowing that they were then engaged in a transaction whose lawfulness was subject to question.

The following statement of Mr. TOOLE, one of the counsel for OGRANIZED BASEBALL in the injunction proceeding brought against it in 1915 by the FEDERAL LEAGUE, taken from the minutes is significant:

"Mr. TOOLE: Here is the situation. It is commonly assumed in all of these negotiations that Mr. Sinclair or Mr. Weeghman or somebody else than the two gentlemen mentioned are going to buy a certain ball club in organized ball, and with that law suit in which organized ball and the methods by which it is conducted, and on the record in which they charge that the methods of organized ball, of which they are to become an integral part, that that is a criminal conspiracy, in effect, and yet they ask that that re-

main on the record while negotiations, in good faith, are going on to get them into that conspiracy. It is the most absurd proposition I ever heard of. They want to buy in. From becoming plaintiffs in a conspiracy, and complainants, they want to buy in as a defendant, and still they do not want to wipe the record clear before they come in."

CONTENTION OF DEFENDANTS IN ERROR THAT PLAINTIFF IN ERROR HAS ELECTED TO CONFIRM PEACE AGREEMENT.

This contention is based entirely upon a letter, dated June 15, 1917, addressed to FRANK T. PRITCHARD, ESQUIRE, GEORGE WHARTON PEPPER, ESQUIRE, SAMUEL L. CLEMENT, ESQUIRE, and others, and signed by CHESTER N. FARR, JR., STUART S. JANNEY and L. EDWIN GOLDMAN. This letter was written after the dismissal of a former suit in Philadelphia by counsel for plaintiff in error, who was plaintiff therein, and notified the gentlemen to whom the letter was addressed and who were counsel for the defendant in that case (defendants in error here), that the agreements entered into between GILMORE and his confederates and defendants in error,

> "are in prejudice of the rights of the corporation which we represent, and were effected in the interest of the parties above referred to purporting to represent the Federal League of Professional Baseball Clubs of Indiana.
>
> "As a stockholder of the Federal League of Professional Baseball Clubs of Indiana, the Federal Baseball Club of Baltimore, Incorporated, which we represent, protests against the provisions of the agreement in question, and demands of you that no further payments be made to any of the parties specified under the provisions thereof until the rights of the Federal Baseball Club of Baltimore as a stockholder of the Federal League of Professional Baseball Clubs of Indiana have been properly adjusted. Should payments be made or any of the provisions of the agreement of December 13th and 22nd, 1915, be

carried out after the notice in this letter, we desire to inform you that the Federal Baseball Club of Baltimore, Incorporated, will hold all the parties thereto to their full legal responsibility for any such acts." (Record, pp. 465, 466.)

It is difficult to comprehend how the writing of this letter can be claimed to amount to an election to confirm, or a ratification of, the Peace Agreement of December 22, 1915, which had not only been from the beginning denounced by plaintiff in error as destructive of its legal rights, and to redress which it had brought suit, alleging that agreement to be in violation of the Sherman Act, *but in the very letter which is quoted exactly the same protest is made and the illegality thereof is reasserted.* The letter, as we have seen, was dated June 15, 1917, and the suit in which this appeal is taken was docketed September 20, 1917. There is no proof and nobody has asserted anywhere that plaintiff in error has ever made claim to or received a dollar of the money paid to GILMORE and his confederates under the Peace Agreement. If the wrecking of the FEDERAL LEAGUE was a violation of the Sherman Act, then, of course, not a dollar of that fund *could ever be legally paid to the parties who, according to the terms of the peace agreement, were to receive it. Harriman vs. Northern Securities Co.*, 197 U. S. 244, 295-299. Neither could plaintiff in error lawfully receive (even if it had ever asked for it, which, of course, is not suggested) any portion of that fund. *The letter in question simply informed counsel for defendants in error that Baltimore protested against the agreement under which the fund was held, and notified them not to pay it over* in pursuance of and in execution of that illegal agreement.

How, it might be asked, can an instrument or understanding that was void from its inception ever be ratified so as to make it binding on anybody? And, in addition,

how could it be ratified at all by one who was in no way a party to it in the beginning and who received no benefits or assumed no obligations under it?

But discussion of these questions would take us far afield. A simple inspection of the letter shows that it affords not the slightest basis for the contention that plaintiff in error did anything different in sending it from what it had done from the beginning, namely, protest against and repudiate the so-called Peace Agreement.

## IV.

### That the Instructions of the Court to the Jury Upon the Question of Damages Were Correct.

We have stated the proposition in this way because, although defendants in error do not appear to make any specific objection to the instructions of the trial Court upon the question of damages, they did in the Court of Appeals press in their brief an exception to a ruling of the trial Court in admitting certain testimony of Mr. GOLDMAN with respect to the cost of the stands and other physical equipment at the ball park of plaintiff in error in Baltimore, and they further contended, as a general proposition, that there was no legally sufficient evidence that the plaintiff in error suffered any pecuniary injury by reason of the acts of defendants in error either in maintaining their monopoly or in their assault upon the FEDERAL LEAGUE during its existence or their final wrecking of it.

The testimony objected to is found on page 119 of the Record, and it will there be seen that the witness merely gave the cost of the buildings, chairs, turnstiles, etc., amounting in all to $82,649.46.

So far as the question raised by this exception is concerned, it might be disposed of by saying that other witnesses testify to exactly the same facts without objection: ROBERT C. MORROW (Record, p. 335); EDWARD HANLON (Record, p. 217).

The error, if any, in admitting this testimony was therefore perfectly harmless. There was, however, no error. The trial Court in its instructions was most careful to say to the jury that the cost of the ball park was not to be accepted as determining its value, but was merely to be considered by the jury in reaching a conclusion upon that question. The learned Judge in his charge said:

> "The plaintiff also claims that it was injured in its property, that is, its physical property, the real estate, the ball park and stand. You have heard the evidence also upon that subject. You have a right to consider in determining the value of that property, what the property cost, both the park and the equipment. Not that they are conclusive, but they are evidence for you to weigh and consider in the question of value. Then you are to determine whether the plaintiff was injured in its property by reason of the illegal acts of the defendants charged and if so to what extent."

It is manifest, therefore, that the testimony in question was not admitted for the purpose of establishing the amount of the defendant's liability, but merely as evidence of a thing to be considered by the jury along with all the other evidence in determining the extent of the injury done to the plaintiff by the illegal acts of defendants.

The testimony is admissible for this purpose (*Sedgewick on Damages*, p. 250; *Corpus Juris*, Volume 22, pages 177, 178, sub-sec. 119). But, of course, there were

many other reasons why the Court should properly admit this evidence. Defendants in error have suggested that the FEDERAL LEAGUE was not injured by any act of the defendants in error, but went out of existence because of the failure of the league and particularly the failure of plaintiff in error to successfully conduct its business. The testimony as to what was done in Baltimore by plaintiff in error to provide the proper facilities for conducting its business, in order to show that it was making a *bona fide*, serious effort to succeed, was certainly admissible. This testimony tended to throw light upon the fact that plaintiff in error was properly equipped and that its business was conducted in such a way as to insure success if it were let alone by ORGANIZED BASEBALL and given a fair opportunity to establish itself.

Upon the general question as to whether testimony was offered by plaintiff in error legally sufficient to show that it had suffered pecuniary injury by reason of the wrongs complained of, a brief reference to the testimony upon this question will remove all doubt. In the first place, however, it should be noted that the Court very carefully instructed the jury upon the question. At the instance of defendants in error the following prayer was granted (Defendants' Prayer No. 11, Record, p. 499):

> "The jury are instructed that their verdict should be for the defendant unless they find from a preponderance of the evidence that as a result of the defendants' acts the plaintiff sustained actual damages in some amount which is susceptible of expression in figures; and such damages must be proved by facts from which their existence is logically inferable and not by conjecture or estimates. They must not be speculative, remote or uncertain."

The trial Court in reading this instruction to the jury made this comment:

"In other words, gentlemen, the burden is upon the plaintiff with respect to this matter of damages, first with respect to showing that there was in fact some damage, some injury, to the plaintiff, of its property or business; and next the amount of that injury, and consequently of the damage to which the plaintiff is entitled. The burden is upon the plaintiff, I say, to make that out by a fair preponderance of the evidence as much as to make out any other essential part of its case. And you are to go no further than the evidence leads you."

The trial Court granted also the following three instructions at the instance of defendants in error (Defendants' Prayers Nos. 14, 9 and 10, Record, pp. 499-500):

"The jury are instructed that the word 'franchise' as used in this case means a right to operate in the Federal League as constituted, and that the words 'franchise value' is the value of such right under all the circumstances shown to exist."

"The jury are instructed that when the plaintiff embarked upon the business for which it was organized it knew the defendants, known as Organized Baseball, were engaged in the conduct of its business in the same manner as during the period of the existence of the plaintiff corporation. This fact should be considered with the other circumstances of this case in determining to what facts the damage, if any, which plaintiff sustained was attributable; and unless the jury find from a preponderance of the evidence that plaintiff was damaged by defendants' acts, and not by reason of inherent weaknesses, bad management or mistake of plaintiff corporation and the league of which it was a member, their verdict should be for the defendants."

"The jury are instructed that the plaintiff does not occupy the same position as a competitor in existence during the period that the power and influence of Organized Baseball was being developed, and

who may have been, during the course of such development, as well as after it had reached the height of its power, injured in its business or property by reason thereof, but is here as one entering the competitive field when such growth and influence had been established. The power and influence of Organized Baseball when the plaintiff embarked upon its business is not actionable to the plaintiff, even though the status of Organized Baseball is due in part to methods which are prohibited by the anti-trust act, and before the plaintiff can recover it must be established by a preponderance of the evidence that Organized Baseball used its power oppressively, not necessarily against the plaintiff alone, but at least in the conduct of its business generally; that is, that it used such methods as, backed by its influential position, tended to the oppression of open competition and to obstruct the trade conditions sought to be protected by the prohibitions of the anti-trust act, and further, that the plaintiff was injured by reason thereof."

It only remains to refer briefly to the evidence produced below tending to prove the amount of damages plaintiff in error sustained by reason of the wrongs shown to have been committed by defendants in error. In the first place the testimony shows that from the very beginning plaintiff in error had to pay excessive salaries in order to obtain players and many times had to accompany those salaries with large bonuses (Record, pp. 468-470). Many acts of the defendants in error were proved tending to show that public confidence in the business of plaintiff in error was injuriously affected and the attendance at games consequently diminished as a result thereof. The testimony showed without any contradiction whatever that there was at the time of the organizing of the FEDERAL LEAGUE a widespread demand among many thousands of people in Baltimore for major league baseball and that plaintiff in error had an excellent chance to succeed if ORGANIZED BASEBALL had let it alone. These

are only some of the things which were definitely and exactly proved. It further appears that after the FEDERAL LEAGUE was disrupted, the ball park of plaintiff in error was sold to the only available customer for $25,000 (Record, p. 120).

But in addition to this, a witness was produced who was probably better qualified to testify upon the value of baseball properties and franchises than any other man in the United States, namely, Mr. EDWARD HANLON. He had been since 1876 connected with the sport and business of baseball in all of its aspects, as a player for, manager and owner of various clubs in the major leagues, and had also been an owner of a club in the International League, one of the leading minor leagues. He had dealt in franchises and ball parks himself and was familiar with all of the sales of franchises and ball parks which had been made in the major leagues during a period of forty years. His testimony upon the question of damages is clear and specific. *It was admitted without objection.*

The question of its legal sufficiency was raised by no specific prayer or exceptions that we have been able to find in the record. *This evidence was before the jury unobjected to* and it is difficult to see how it can be argued that the specific valuations which were put upon the physical properties and the franchise in the FEDERAL LEAGUE can be said not to have afforded legally sufficient evidence to be used by the jury in calculating the amount of damages which plaintiff in error sustained.

The argument made by defendants in error in the Court of Appeals, if adopted by this Court, would practically nullify the Sherman Act in cases where the wrong which a monopoly has committed is carried to the extent of exterminating a competitor. They argued that the

business of plaintiff in error did not earn a profit during the two years of its operation and that it was exterminated before it ever had an opportunity to earn a profit and therefore the business cannot be said to have been of any value either during the time of its operation or at the time it was wrecked. This is the ground upon which they must base their contention that there was no testimony from which the jury might find a verdict for the plaintiff. If such a mode of reasoning were adopted it would mean that the more aggravated the violation of the Sherman Act in any case the more complete the immunity of the wrongdoer from liability would be. The true rule, of course, is the one adopted by the learned Judge below, that the jury should allow the plaintiff such amount of damages as would compensate it for the injury to its business during the period it was operating caused by the illegal acts of the defendants, and should further award it as damages the difference between the value of its physical property and franchises before the wrecking of the FEDERAL LEAGUE and afterwards. This is the only rule that can be adopted without, as we have said above, nullifying the Sherman Act.

That there was ample testimony to justify the jury in making a calculation of pecuniary injury will appear from the following testimony of Mr. HANLON, given after a thorough foundation for his figures had been laid, as will be seen by reference to the testimony which precedes that about to be quoted (Record, p. 217):

> "Under the circumstances and conditions at the time of the peace agreement, December 13, 1915, the Baltimore franchise was worth about $75,000, improvements about $100,000, and players about $30,000, aggregating $205,000. The estimate of $75,000 for the franchise assumes that the Federal League would continue and that Organized Baseball would continue its policy of reservations. If players

of Organized Baseball had been free to accept employment with the Federal League, if they had not been under reserve, the Baltimore franchise would have been more valuable, because then the Federal League would not have been required to give big contracts and bonuses. 'If the market was open of course I could get a better class of players.' If the market had been open the franchise value would have been double $75,000. The franchise is not worth anything just now, its value is entirely destroyed. Does not know exactly what Baltimore invested in this enterprise. Cannot state how much operating expenses were increased by reason of the reserve clause in Organized Baseball, but it was increased, there is not any question about that. The cost of the reservation, trying to get those boys to come away for the simple reason that they told me 'I have to do the best I can for three years, and at the expiration of those three years there will not be any field for me in organized baseball, and consequently, I have to quit, and if you people should happen to fall down in this contest or this fight, you have with organized baseball, we certainly will be out of it anyway.' Baltimore could get young players, but those gotten from Organized Baseball were most all old players. Were desirous of getting players that were known to the public and had a reputation.

"Asked whether it was easier to get a young man or an old man to accept employment from the Federal League, witness said, 'The older ones I think would rather come for the simple reason they anticipated that they were just about out of it.' After breaking up of the Federal League, contracts with players were of no value to the Baltimore club. They were a liability. If at the time the Baltimore club was organized there had been a free market for players, there isn't any question that there would be baseball in Baltimore today. Baltimore has a population of 750,000, and the people are very desirous of having major league ball there and would pay for it, and would support baseball as well as any city in the country. The Baltimore club could have been con-

ducted with profit. The conditions in Baltimore today are as good as in any city in the country for ball. There is plenty of money in Baltimore. It could have been conducted at a sufficient profit to pay a fair return on the investment in 1914 and 1915, witness thinks."

This testimony, together with the many other facts appearing in the case, bring it within the rulings of this Court in the case of *Thomsen vs. Cayser*, 243 U. S. 66, 88-89, where this Court said:

> "It is next contended that the jury was permitted to consider as elements of damage suppositious profits. The record does not sustain the contention. The profits were not left to speculation. There were different sums stated, resulting from the loss of particular customers, and the fact of their certainty was submitted to the judgment of the jury. They were told they 'ought not to allow any speculative damages,' that they were not 'required to guess' as to what damages 'plaintiffs claim to have sustained.' And, further, that the burden of proof was upon plaintiffs and that from the evidence the jury should be able to make a calculation of what the damages were. Besides, plaintiffs alleged an overcharge, and the verdict of the jury was for its amount and interest."

It will be observed that the jury returned a verdict of $80,000, which plainly indicates that they did not take as a basis of estimate the actual investment of plaintiffs in its business, of about $240,000, including cost of ground, improvement and equipment, excessive salaries, bonuses and loss on unexpired contracts with players at the time the league was wrecked. It was shown at the trial that after the league went out of business in 1915 the plaintiff in error was left a liability of over $30,000 to players alone on existing and unexpired contracts. It might well be argued that where a business is ruthlessly destroyed before it has had an opportunity to establish itself, that is,

destroyed practically at its inception, by acts unlawful under the Sherman Act, the measure of damages is the amount of the investment, but in view of the verdict of the jury and the instructions of the Court it is plain that such a rule was neither followed nor permitted in this case and therefore need not be discussed.

V.

## That There Is No Error in Any of the Rulings of the Trial Court Upon the Admissibility of Evidence or in Its Instructions to the Jury.

In their brief in the Court of Appeals defendants in error discussed only the propositions which have been adverted to in the former portions of this brief. In view of the fact that they did not see fit to support there any of the other assignments of error by any argument we feel justified in concluding that they do not believe them of sufficient import to press them. We respectfully submit that there was no error in any of the rulings of the Trial Court.

### Conclusion.

This brief may be concluded with the remark that the Court will find upon reviewing the entire record that the trial in the Supreme Court of the District of Columbia was one of entire fairness to both parties; the learned judge who presided being careful to exclude all evidence which might by any reasonable possibility prejudice the rights of the defendants in error. After the conclusion of the testimony the case was submitted to the jury under instructions from both sides which clearly stated the law upon the issues involved and these instructions were supplemented by a charge of eminent clearness, comprehensiveness and fairness on the part of the presiding judge.

We respectfully submit that the judgment of the Court of Appeals should be reversed and that of the Supreme Court of the District of Columbia affirmed.

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Counsel for Plaintiff in Error.

APR 11 1922
WM. R. STANSBURY
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1921.

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No. 204.

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THE FEDERAL BASEBALL CLUB OF BALTIMORE, INCORPORATED,
PLAINTIFF IN ERROR,

*vs.*

THE NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, NATIONAL EXHIBITION COMPANY, THE BROOKLYN BALL CLUB, ET AL.,

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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

---

## SUPPLEMENT TO BRIEF FOR PLAINTIFF IN ERROR.

---

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## SUPPLEMENT TO BRIEF FOR PLAINTIFF IN ERROR.

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The brief on behalf of the defendants in error in this case contains certain statements which we feel it our duty to call especially to the attention of the Court together with our brief comments thereon.

(1) It is alleged that the FEDERAL LEAGUE, of which the plaintiff in error was a constituent member, "*unsuc-*

*cessfully sought to be admitted as a party to the National Agreement and to operate thereunder as a Major League,"* and also that the organization which *"the plaintiff in error had unsuccessfully attempted to enter was,"* etc. (Brief of Defendants in Error, pages 3, 4 and 19, 24 and 25). The only testimony to which defendants in error refer to justify this statement is that of Byron Bancroft Johnson, on pages 443 and 444 of the Record, which is as follows:

> "The witness further testified that the Federal League began what they termed major league ball in 1914. At that time witness had a talk with Gilmore, the president of the Federal League. Thinks Gilmore wanted to operate Federal League under the National Agreement."
>
> "Defendants' counsel then asked the following question: 'What proposal, if any, was made to you as a representative of Organized Baseball, by the president of the Federal League, with respect to future relationship between the two parties?' The witness replied: 'His suggestion was that the Federal League should operate under the National Agreement, and wanted it recognized as a major league. Those were his thoughts expressed to me.' Witness told Gilmore that there was not room for three major leagues unless the standard of baseball was lowered. Gilmore wanted a meeting with the National Commission and requested that witness get in touch with Herrman and Tener to determine if a meeting could be held to shape their difference, and they could be recognized as a major league under the National Agreement. Witness told Gilmore he would communicate with him again if he could arrange the interview, but never did so. This conversation was in February, 1914. Witness had a subsequent meeting in March, 1915, on the same general subject with Mr Ward, who wanted an amalgamation with the American and National Leagues. The Chicago suit had then been instituted."

It is not suggested that either the Federal League or the plaintiff in error, The Federal Base Ball Club, ever authorized Mr. Gilmore or Mr. Ward or anyone else to make any such proposals or anything in the nature thereof at any time.

*The defendants in error seem to think it unimportant to distinguish between casual interviews with individuals interested in the business of corporations and action on the part of the corporations themselves.*

(2) On page 46 of the Brief of Defendants in Error, it is solemnly asserted:

> "(c) * * * the world series games cannot be continued at all unless under the restraint of elaborate interleague organization, and the Sherman Act ought not to be so interpreted so as to make this great and popular event an impossibility." See further pages 69 and 70 of said brief.

The simple answer to all this is that there is not a word in the National Agreement or the Rules and Regulations enacted in pursuance thereof regarding the World's Series. And the contention, we submit with great respect, is not worthy to be taken seriously that the huge combination known as Organized Baseball, with all of its devices for controlling completely the business of baseball and excluding the possibility of all competition therein, can be justified because of the custom of playing a few games of baseball at the end of each season between the pennant-winners of two of those leagues. There is not a line of testimony to support such a contention and it is obviously repugnant to reason. Simply because it is not claimed by plaintiff in error that the playing of the few games of the World's Series, taken by themselves, do not constitute anything illegal, affords no basis for the argument of defendants in error that

freedom from wrongdoing with reference to this simple detail of their business furnishes immunity from responsibility for a long series of other illegal acts.

It will be observed that defendants in error seek by emphatic assertion and reiteration to establish an identity between their business as they have organized it and the public interest in the sport of baseball. They would have it appear that any interference with any of the practices by which they have controlled for their own great profit the purely business side of the enterprise will affect injuriously the interests of the public in the sport of baseball. There is, however, no shadow of support for such a view, even assuming it to be relevant to the issues of the case. Every fact in the Record establishes that the purging of this business of the sordid interests and motives of those who have heretofore by a succession of palpably illegal practices obtained control over it, will in the end operate most advantageously for the public and everyone connected either in a business way or otherwise with the game.

(3) The defence of defendants in error to the charge of monopoly will be found on pages 64-71 of their brief, and it is important that notice should be taken of what is there said. The substance of the defence is that defendants in error observe a rule fixing a limit upon the number of players to be employed by the respective clubs in Organized Baseball (Rec., p. 91), and as all the players employed by them are needed, they cannot accordingly be guilty of anything in the nature of engrossing the market. Defendants, however, do not make and cannot make any denial of the fact that at the time when the Federal League was organized and for a long time prior thereto, there was embraced in Organized Baseball every club in the United States employing players and every

business enterprise conducting exhibitions of games for profit. Of this all-embracing combination defendants in error are the dominating forces. Under the National Agreement no one outside the ranke of Organized Baseball could deal with any business organization within that combination or any player under contract with, or any player under reservation by any such organization (Rec., p. 36, Art. 1, Sec. 1; Rec., p. 39, Art. 6, Sec. 2; Rec., p. 143, Art. 22, Sec. 1, Sec. 2; Rec., p. 147, Art. 28, Rec., p. 231, Sec. 6 (4), (10)). Under the National Agreement there could be all sorts of dealings *between the business concerns in the combination* regarding all matters pertaining to the business side of the enterprise (Rec., pp. 117 and 127), and particularly regarding the transfer and sale of players, but no outsider was permitted to have any such dealings, and thus any outsider was excluded from dealing with everybody in the United States engaged in this business because, as we have said, the combination known as *Organized Baseball* embraced within it every existing business concern providing exhibitions and employing players.

There was a constant movement of players within *Organized Baseball* resulting from dealings between the corporations employing them. Usually a player enters the profession by accepting a small salary from one of the clubs in one of the small-town leagues of low classification (Rec., pp. 125-127). If he develops greater skill he may be sent on up in the scale if the club employing him can make arrangements satisfactory to itself regarding the price to be paid to it for the player by a club of higher classification. In this way new players are brought into the profession. The supply, therefore, within Organized Baseball is always equal to the demand. As things were under the National Agreement, however, no one outside the monopoly of Organized Baseball could

go anywhere in the United States to any club no matter how low its classification and enter into negotiations for a player. If the Federal League had been permitted to deal with the minor leagues, for instance, there is an abundance of testimony to show that they could have found plenty of players *who were capable of playing first-class ball* (Rec., pp. 127-8; Rec., p. 222). But it was absolutely excluded. The National and American Leagues could go there, but such ordinary right of dealing was foreclosed to the Federal League which attempted to give baseball of the same type. When looked at, therefore, from the standpoint of a club of Major League classification, the situation was this, that the whole of the approximately eight thousand professional players were held for the benefit of the two Major Leagues in Organized Baseball, although about four hundred were the greatest number that these two Major Leagues in Organized Baseball could possibly use. And so it is as to every other league in Organized Baseball. The effect of that combination is to hold all the players employed by all its organizations for each, so as to prevent any competition from springing up against any part of Organized Baseball. In other words, every club in Organized Baseball agrees not to have any dealings with any outside organization regarding a player or anything else, so as to avoid giving the means of competition against either itself or any other member of the combination.

Defendants in error say (page 64), "* * * it is conceded that the number of skilled baseball players in the United States at any time is smaller than the number of places to be filled." There is no such concession in the record in this case or in the brief which we have filed. Such is not the fact. Every place *in Organized Baseball* so far as we know has been filled *with a skilled*

*player,* and no trouble whatever has been experienced in filling every place upon every club. Each organization in that combination has access to eight on ten thousand skilled players and can always supply any vacancy. As we have already said, there is a constant movement of players within the combination. Evidently what was intended to be said by defendants in error was that there is always a demand for more players of phenomenal skill than are ever available. Nevertheless, this business does not halt because prodigies cannot be found; the game is played with the best men available, and always will be played with such men.

If the Federal League had been permitted even to go to the natural market for players, that is to all the various minor leagues, to negotiate for players it could have found plenty of men for its clubs of its league. Whatever men had been taken away would have had their places supplied by men obtained from other clubs on down the line, and new men would have come into the game through the leagues of lowest classification making up for all deficiencies. This is exactly what has always happened in Organized Baseball. As the clubs of the leagues of higher rank take men from leagues of lower rank the vacancies all down the line naturally will be filled by players brought from a league a step below, until the lowest is reached, where they are obviously obtained from the outside. Of course, there are exceptions to the general rule, as for instance where a boy who has been a star (Rec., p. 281) on a college team may walk into a place on the team of a club in a league of high classification, but the general movement is as we have stated.

So that the rule fixing a limit to the number of players a particular club may employ, does not in theleast

diminish the effectiveness of the monopoly, which by the terms of the agreement under which it operates, excludes every enterprise not embraced therein from the only known sources of obtaining players.

(4) Defendants in error call attention (Brief, p. 65) to the fact that the Federal League did obtain three hundred players from the ranks of Organized Baseball. This fact is emphasized by defendants in error as negativing the fact that Organized Baseball could have monopolized the playing talent. But it shows nothing of the kind. The testimony is undisputed that the plaintiff in error could not get the players it desired because these players were afraid of being blacklisted if they left the ranks of Organized Baseball. Plaintiff in error was compelled to take such players as it could get, who were usually old men, about ready to leave the profession and who risked nothing in leaving Organized Baseball. The testimony is also undisputed that plaintiff in error was compelled to pay large salaries and bonuses to even such players as it was able to persuade to accept employment from it. The record here can leave no shadow of doubt upon the question that all known and ascertained professional players in the United States were under the control of Organized Baseball, and that plaintiff in error suffered great injury and damage as the direct and immediate consequence of such monopoly (See Record, pp. 118, 177 and 217).

(6) We submit that the whole question of monopoly in this case is set at rest by this paragraph from the brief of defendants in error (page 70):

> "The question in the case before the Court is not whether the world's series games can be conducted to greater public advantage if the National Agreement is dissolved, but whether Congress intends the

> the crowning feature of the national game shall be done away with. Assuming that baseball is interstate commerce, it is true that Congress and the Department of Justice might insist upon such an unnecessary and unpopular result; but no statute could be construed as applying to combinations to regulate sport unless Congress has plainly indicated an intention that this should happen. Not only is there no such indication in the Sherman Act, but the Court will be slow to construe a statute enacted to promote free competition in a field in which competition is the life of trade as if it were applicable *to a case in which life depends not upon competition but upon the complicated and complete restraint and regulation thereof.*"

Is not this equivalent to the statement that the whole defence in this case rests upon the assumption of defendants in error that the life of the business of providing exhibitions of professional baseball as *they conduct it*

> "depends *not upon competition*, but upon the complicated *and complete* restraint and regulation thereof"?

And doesn't this raise the simple question as to whether defendants in error are above the law or the law is above them?

Respectfully submitted,

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IN THE

# Supreme Court of the United States.

**No. 204.** **October Term, 1921.**

THE FEDERAL BASEBALL CLUB OF BALTIMORE, Incorporated.

*Plaintiff-in-Error,*

*v.*

THE NATIONAL LEAGUE OF PROFESSIONAL BASE-BALL CLUBS, NATIONAL EXHIBITION COMPANY, THE BROOKLYN BALL CLUB, ET AL.

In Error to the Court of Appeals of the District of Columbia.

## Brief on Behalf of Defendants In Error.

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## INDEX.


| | Page |
|---|---|
| I. Statement of the Case | 2 |
| II. Argument | 6 |
| (a) Review of Important Facts | 6 |
| National and American Leagues | 6 |
| National Commission | 7 |
| Major and Minor Leagues | 8 |
| Method of Operation | 9 |
| Players' Contracts | 12 |
| Reserve Clause | 13 |
| Assignment and Draft Waiver | 14 |
| Number of Players Limited to Twenty-two per Club | 16 |
| Federal League | 18 |
| The Killifer Case and Effect of Reserve and Ten-Day Clauses | 21 |
| Effect of Seduction of Players by Federal League | 22 |
| Failure of Federal League | 24 |
| Steps Leading to the "Peace Agreement" | 26 |
| The Biltmore Meeting | 27 |
| The Waldorf-Astoria Meeting | 27 |
| The Peace Agreement | 33 |
| The Suit in Disaffirmance (Eastern Dist. of Pa.). | 37 |
| The Letter of Affirmance | 37 |
| Damages | 40 |
| (b) Discussion of Questions of law | 44 |
| 1. "Organized Baseball," So-called, is not Interstate Commerce and Does not constitute an Attempt to Monopolize Within the Sherman Act | 45 |

Page

(a) Personal Effort Not Related to Production is Not a Subject of Commerce and the Attempt to Secure All the Skilled Service Needed for Professional Baseball Contests is Not an Attempt to Monopolize Commerce or Any Part of It ..... 46

Baseball is the Exertion of Human Skill With No Relation to Production .. 47

Insurance is Not Commerce ..... 48

Teaching by Correspondence Distinguished ..... 48,50

Opera and Plays Are Not Commerce .... 53

Theatrical Brokerage Distinguished .... 55

Baseball Has Been Held Not Commerce 59

Organized Baseball is Not a Monopoly. 62

(b) Sporting Events Are Peculiarly the Subject of Local, as Distinguished from National Control ..... 66

(c) Such Organization as is Necessary for the Protection of the World Series Games is Not Unlawful ..... 68

2. The Plaintiff-in-Error Cannot Maintain an Action for Conspiracy Against Defendants Who, to the Knowledge of the President and Representative of Plaintiff-in-Error, Were Acting in the Belief That an Inter-League Settlement Was Desired by All ..... 72

Baltimore's Representatives Participated in the Inter-League Settlement for the Purpose of Securing Benefits Thereunder ..... 73

The Representatives Individually Are Estopped ..... 74

Page

The Club is Likewise Estopped, Because of Its Agents' Misrepresentation ..... 75

Because the Club is Bound by the Knowledge of Its Agents ..... ..... 77

And Because Both the Club and the Agents Are in **pari delicto** ..... 79

3. The Plaintiff-in-Error, Having Elected to Affirm the Peace Agreement, Cannot Repudiate the Election and Sue in Disaffirmance ..... 82

The Notice of Ratification Was Proper After Discontinuing the First Suit ..... 83

But Baltimore Cannot Thereafter Disaffirm .. 85

4. There is No Such Evidence of Pecuniary Damage as Justifies a Submission of Questions of Damage to the Jury ..... 89

The Measure of Damage Must Be the Difference Between the Worth of the Business and Property Affected by the Alleged Unlawful Acts of the Defendants-in-Error as Compared With Their Worth Had the Defendants-in-Error Acted Lawfully ..... 90

Actual Damages Only Can Be Recovered .... 91

Damage Cannot Be Estimated by a Mere Guess ..... 93

5. If the System of Organized Baseball Violates the Sherman Act, Then the Injury, if Any, Resulting Therefrom Was to the Federal League, a Corporation, and Suit to Recover Damages for Such Injury Can Be Maintained Only by the Federal League ..... 102

## APPENDIX.

Stenographic Minutes of the Waldorf-Astoria Meeting of December 17, 1915 ..... 105

## TABLE OF CASES.


| | Page |
|---|---|
| American Baseball Club of Chicago v. Chase, 149 N. Y. Supp. 6 | 59 |
| Ames v. Am. Tel. & Tel. Co., 166 Fed. Rep. 820 | 103 |
| American Sea Green Slate Co. v. O'Halloran, 229 Fed. Rep. 77 | 93 |
| Arena Athletic Club v. McPartland, 41 App. Div. 352 | 23 |
| Andrews v. Aetna Life Ins. Co., 92 N. Y. 596 | 86 |
| Armstrong v. Ashley, 204 U. S. 282 | 78 |
| Brooklyn Baseball Club v. McGuire, 116 Fed. Rep. 782 | 23 |
| Bank of U. S. v. Davis, 2 Hill 451 | 77 |
| Central Coal & Coke Co. v. Hartman, 111 Fed. Rep. 96 | 90, 95 |
| Cincinnati Gas Co. v. Western, 152 U. S. 200 | 99 |
| Corey v. Independent Ice Co., 207 Fed. Rep. 459 | 103 |
| In Re Duff, 4 Fed. Rep. 519 | 54 |
| Dickerson v. Colgrove, 100 U. S. 578 | 75 |
| Fletchers Cyc. Corp., Vol. 5, Sec. 3343 | 81 |
| Goebel v. Hough, 26 Minn. 252 | 92 |
| Hoke v. U. S., 227 U. S. 308 | 62 |
| Hooper v. California, 155 U. S. 648 | 48 |
| Hovey v. Blanchard, 13 N. H. 145 | 76 |
| Howard v. Stillwell & Bierce Mfg. Co., 139 U. S. 199 | 98 |
| International Textbook Co. v. Pigg, 217 U. S. 91 | 50 |
| Killifer Case, 215 Fed. Rep. 168, 289 | 21 |
| Knight Case, 156 U. S. 1 | 61 |
| Lee v. Chicago League B. Club, 169 Ill. App. 525 | 23 |
| Leonard v. Abner-Drury Brewing Co., 25 App. D. C. 161 | 97 |
| Loeb v. Eastman Kodak Co., 183 Fed. Rep. 704 | 103 |
| McCaskill v. U. S., 216 U. S. 504 | 79 |
| McCormick v. U. S. Mining Co., 185 Fed. Rep. 748 | 99 |
| Marienelli v. United Booking Office, 227 Fed. Rep. 165 | 58 |
| Metropolitan Exhibition Co. v. Ewing, 42 Fed. Rep. 198 | 23 |
| Metropolitan Exhibition Co. v. Ward, 9 N. Y. Supp. 779 | 23 |

## TABLE OF CASES—Continued.


Pag

Mettropolitan Opera Co. v. Hammerstein, 147 N. Y. Supp. 532 . 5
Mointgomery v. Chicago, 228 Fed. Rep. 616 ..... 10
Moırgan v. Railroad, 96 U. S. 716 ..... 7
Moıtion Picture Patents Co. v. Universal, 235 Fed. Rep. 401 ... 5
Nattional Bank v. Munger, 95 Fed. Rep. 87 ..... 7
Noırth River v. Aymar, 3 Hill 262 .....
In Re Oriental Soc., 104 Fed. 975 .....
Paıul v. Viginia, 8 Wal. 168 .....
Peoople v. Klaw, 106 N. Y. Supp. 341 .....
Roıgers v. Vicksburg, 194 Fed. Rep. 65 .....
Russs v. Telfener, 57 Fed. Rep. 973 .....
Ruttland Marble Co. v. Riple, 10 Wal. 339 .....
Sanders v. Peck, 87 Fed. Rep. 61 .....
Simmons-Mayrant Co. v. Atlantic, 207 Fed. Rep. 387 ..... 1
Smıith v. Cologan, 2 T. R. 188 .....
Smıith v. Farrell, 66 Mo. App. 8 .....
Unıion Bank v. Campbell, 4 Humphrie 394 .....
Unıited Copper Co. v. Amal. Copper Co., 244 U. S. 261 ..... 1
U. S. v. United Shoe Machinery Co., 234 Fed. Rep. 144 .....
Weest Virginia Transportation Co. v. Oil Co., 50 W. Va. 611 ...


## STATUTES CITED.


Claayton Act, Section 6 (38 Stat. L. 731) .....
Feed. Stat. Anno., Vol. 9, page 717 .....

IN THE

# Supreme Court of the United States.

October Term, 1921. No. 204.

*The Federal Baseball Club of Baltimore, Incorporated,*

Plaintiff-in-Error,

v.

*The National League of Professional Baseball Clubs, National Exhibition Company, the Brooklyn Ball Club, the Philadelphia National League Club, Successor of the Philadelphia Ball Company; the Boston National League Baseball Company, Chicago National League Ball Club, Successor of the Chicago League Ball Club; St. Louis National Baseball Club, Successor of the American Baseball and Athletic Exhibition Company of St. Louis, Missouri; the Pittsburgh Athletic Company, the Cincinnati Baseball Club, Formerly the Cincinnati Exhibition Company; the American League of Professional Baseball Clubs, American League Baseball Club of New York, Successor of the Greater New York Baseball Association; the Boston American League Baseball Club, American Baseball Club of*

*Philadelphia, the Washington American League Baseball Club, American League Baseball Club of Chicago, the St. Louis American League Baseball Company, the Detroit Baseball Company, the Cleveland Baseball Company, Successor of the Cleveland Ball Club Company; August Herrmann, Bancroft B. Johnson and John K. Tener,*

Defendants-in-Error.

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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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# BRIEF ON BEHALF OF THE DEFENDANTS-IN-ERROR.

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## I.

## STATEMENT OF THE CASE.

The case is here on a writ of error to review a judgment of the Court of Appeals of the District of Columbia which reversed a judgment of the Supreme Court of the District of Columbia in favor of the plaintiff-in-error and, which later upon the request and with the consent of the plaintiff-in-error, remanded the cause to the Supreme Court of the District of Columbia with direction to enter a judgment in favor of the defendants-in-error.

The National League, the American League and the National Association (of minor leagues) were (and are) parties to an agreement (styled the National Agreement) prescribing rules and regulations for the playing of professional baseball by teams operating under it throughout the country. After this system had been in operation for about ten years, a corporation styled the Federal League (the stock of which was held by eight corporate clubs, of which the plaintiff-in-error is one) unsuccessfully sought to be admitted as a party to the National Agreement and to operate thereunder as a major league. The Federal League then undertook to produce first-class baseball as a separate organization. This precipitated indiscriminate bidding for the services of skilled players, caused much litigation and plenty of bad feeling on both sides. The undertaking was a failure. After two seasons (1914 and 1915) the officers of the Federal League, and the president of the plaintiff-in-error, who represented his club upon the Central Board of Managers, attended a conference with representatives of the major leagues to discuss peace terms. The Federal League representatives assured the major league representatives that they had power to act for all the constituent Federal League clubs. An agreement was reached and some time later was reduced to the form of a contract, which provided for taking back into "organized baseball" all the players

whom the Federal League had taken over, specified cash considerations for the assignment of the leases of Federal League grounds, and their withdrawal from baseball use, and in the case of the unadjusted equities of the plaintiff-in-error and one other Federal League club, specified a method of arbitration by a designated committee. The president and the attorney of the Baltimore Club, who knew that the major leagues were acting upon the assumption that the Federal League representatives had authority to bind all constituent clubs, made no attempt to correct the impression, called no meeting of the club or its officers pending the negotiation, waited until after the peace agreement had gone into effect, and then communicated what had happened to a meeting of the Baltimore Club's stockholders. Thereupon a cause of action based on Section 7 of the Sherman Act was asserted and suit was brought for treble damages, upon the theory that the organization which the plaintiff-in-error had unsuccessfully attempted to enter was a combination to monopolize interstate commerce and that its operations had caused pecuniary damage to the plaintiff-in-error.

At the trial of the action the Court ruled that professional baseball as conducted by the plaintiff-in-error is interstate commerce; that their organization constituted an attempt to monopolize a portion thereof; that the circumstance that the president of the plaintiff-in-error had not been authorized by his club to assent to the peace agree-

ment made it legally immaterial that the agreement had been entered into in the belief, induced by him, that he had such authority; that certain conduct alleged by the defendants-in-error to constitute an election by the plaintiff-in-error to claim benefits under the peace agreement and not in opposition thereto, had not in law the effect contended for; that there was evidence from which the jury might infer that the acts of the defendants-in-error had caused pecuniary damage to the Baltimore Club; and left to the jury only two questions for decision: First, whether the failure of the Federal League enterprise was due to the operation of the system held by the Court to constitute a monopoly, and if so, what was the amount of the damage resulting to the Baltimore Club?

The trial Court having eliminated as immaterial the absence of any actual conspiracy against the Baltimore Club and the participation of its president in the transaction, and having delivered a charge which would justify the jury in finding for the plaintiff if they believed that the mere existence of organized baseball had made it impossible for the Federal League experiment to succeed, it was inevitable that the jury should find a verdict for the plaintiff, and they did so, assessing the damages at $80,000.

On appeal to the Court of Appeals of the District of Columbia, judgment entered upon this verdict was reversed. Plaintiff thereupon sued out this writ of error.

## II.

## ARGUMENT.

In prescribing the argument it is not possible to make a clean-cut separation between questions of law and questions of fact. They are necessarily interwoven. It is proposed, however, to begin with a summary of the most important facts in narrative form, indicating the questions of law where the facts give rise to them and then to conclude with a specific discussion of legal principles and a citation of authorities.

### (a) Review of Important Facts.

The National League is an unincorporated association composed of eight incorporated clubs. Each club is organized for profit but the league is not. Its principal function is to regulate contests between the teams representing the several clubs in the league, which compete annually for a championship pennant. The league buys baseballs from the manufacturers and resells at cost to the clubs. It has a contract with the Western Union for telegraphic service. It has an annual income sufficient to meet necessary expenses, which income is derived from contributions made by the league clubs and, as hereinafter explained, from a percentage of the receipts from the games in the world's series. The National League has had a

continuous existence since 1876 (Record, p. 83).

The American League is likewise an unincorporated association of eight clubs. What has just been said with regard to the National League applies also to it. The American League was formed in 1901 (Record, pp. 83, 84).

The National Commission is an unincorporated body composed of the presidents of the two leagues and a third person selected by them. The commission is not a profit-making concern, but is merely an administrative body. The club which wins the National League pennant in any year competes for the world's championship in that year with the winner of the American League pennant (Record, pp. 395, 396). These competitive games (called the world's series) are certainly the most popular sporting events in America and perhaps in the world. It is one of the functions of the National Commission to regulate these contests. The gate receipts at the world's series games are divided as follows: 10 per cent. of receipts of all the games to the National Commission for operating and administrative expenses. Of the remaining 90 per cent., 60 per cent. of the first four games goes to the players' pool and is divided 60 and 40 between the winning and losing players. The remaining 30 per cent. of the 90 is divided between the two contesting clubs, who in

turn are required to pay into their respective league treasuries 50 per cent. of their share.

The National Commission uses the funds which it receives solely for administration purposes. Such unspent funds as it has at any time are not accumulated for distribution, but are held merely as a reserve to meet liabilities (Record, p. 397).

The National Commission exists in virtue of an agreement (styled the National Agreement), made in 1903 between the National League, the American League and the National Association, an unincorporated association of minor leagues; but there had existed a National Agreement in some form as far back as 1883, which was abrogated in 1902 (Record p. 395). Under the operation of this agreement the system (presently to be described) has grown up, which is declared by the plaintiff-in-error to be in contravention of the Sherman Act (Record, p. 84).

The National League and the American League are popularly styled the "major leagues." Prior to 1913 they were the only two major leagues in existence. In that year an organization styled the Federal League of Professional Baseball Clubs announced itself a major league, as hereinafter explained.

While the National League and the American League were (prior to 1913) the only two major leagues there were, and are, large numbers, of

minor leagues of professional baseball operating throughout the United States. Each of these is similar in structure to the major leagues, but the players on the minor league teams have not, in general, obtained as high a degree of skill as that which characterizes a major league player. The minor leagues are graded according to the quality of baseball played by their constituent clubs. The classes are designated by letters as follows: Class AA, Class A, Class B, Class C and Class D (Record, pp. 103-105). At the time this suit was brought these minor leagues were all included in the National Association of Professional Baseball Clubs, above referred to. Its nature and purposes were similar in its field to those of the major leagues. It covered the greater part of the field of professional baseball below major league grade (Record, p. 106); but outside of it were some professional organizations, many semi-professional organizations, and all college and amateur organizations.

Without the aid of the testimony the Court knows in a general way how the inter-club and inter-league games are arranged and played. In the National League there is a team representing each of the following cities: Boston, Brooklyn, Chicago, Cincinnati, New York, Philadelphia, Pittsburgh and St. Louis. In the American League the cities represented by the teams are as follows: Boston, Chicago, Cleveland, Detroit, New

**York, Philadelphia, St. Louis and Washington.** The International League (which is an AA league) has a team in each of the following cities: Akron, Baltimore, Buffalo, Jersey City, Reading, Rochester, Syracuse and Toronto. The cities in each league comprise the "circuit." They must be so related geographically that over night transit from one to the other is possible. The size and character of the population must be such as to warrant the expectation of a paid attendance at the games proportioned to the expense incident to the baseball produced. A schedule for each league is arranged prior to the beginning of each playing season. The making of the schedule is a complicated thing. Experience shows that the public in any city will patronize inter-club games in either major league up to the number of seventy-seven per season (Record, p. 83). The test of what is called a "two-club town" is whether a club in each of the two major leagues can command public patronage to the extent just indicated. While the public in Boston, Chicago or Philadelphia, would not patronize more than seventy-seven games in which the local National League club was a contestant, they will patronize another series of seventy-seven in which the local American League club contests. In greater New York three such series are the ascertained limit of what is practicable in any season. If an attempt is made to play more than this, attendance falls off below the paying point. The

games played by each club during the season must be divided in a certain proportion between its home grounds and the grounds in other cities. Allowance must be made for unfavorable weather conditions and the playing off of postponed games. High-class umpires of character beyond suspicion must be assigned for each contest. As there must be much careful regulation of the contest for the championship pennant within each league, so it is essential that elaborate and detailed provision should be made in advance for the world's series contests between the two pennant winners. The world's series is the crowning event of the season of out-of-door sport.

During the playing season teams travel by train from place to place, taking with them their uniforms and other paraphernalia of the game.

Much stress is laid by the plaintiff-in-error upon the interstate feature of professional baseball. That transit across the State lines is an essential feature is of course conceded. It is obvious, however, that the transit is not the end in view. It is merely the means of getting the players to the point at which the contest is scheduled to take place. The transportation of the paraphernalia is a wholly incidental and subsidiary feature, as would be the case with a surgeon's tools taken into another State for the purposes of an operation.

The defendants-in-error do not dispute the power of Congress to regulate intercourse between

the States. It might even be constitutional for Congress to deny the use of transportation facilities to any team of players proposing to play baseball in another State, just as Congress (by the so-called White Slave Act) has made it punishable under certain conditions, to cross State lines for immoral purposes. In the present case, however, the important question for decision is whether the activity itself—the spontaneous local output of personal effort and skill—is within the scope of Congressional regulation. If it is not, the mere fact that the players habitually and necessarily cross State lines is not legally a material circumstance.

This highly important question of law will be further discussed later in this brief.

Having now described the nature of the major and minor leagues and of the organization through which they operate, and the method of arranging the interclub and interleague contests, it is proper to present a summary statement of the elaborate system of players' contracts developed under the National Agreement. This system is modified from time to time. The statement here given refers to the conditions which existed when the alleged cause of action was accruing. It is this system which, according to the ruling of the trial Judge, constituted an attempt to monopolize the business of professional baseball and as an inseparable

part thereof, to monopolize a part of interstate commerce.

When a young man desires to receive pay for playing baseball, he "signs up" with a professional baseball club. If he has achieved some distinction as a college player, he may, in rare cases, secure a contract with a major league club. In the vast majority of instances, however, he contracts with a minor league club of a grade corresponding to his apparent skill. The contract which he signs binds him to play for his club at a stated compensation, subjects him to various disciplinary regulations and contains a negative covenant binding him not to play for any other club during the life of the contract. The standard forms of contract appear in the Record in pages 107 to 113.

Emphasis must be laid upon two features of the playing contract common alike to the major leagues and the Federal League.

The first of the two features referred to is the so-called "reserve clause," the effect of which is to give to the club the optional right at the expiration of the contract to make a new contract with the player at a salary to be agreed upon between him and the club. If the parties can agree upon the salary, the new contract is in due course signed. If the player does not accept the highest salary which the club is willing to pay, he will not be "signed" by any other club working under the National Agreement; because it is a provision of

that agreement that every club will "respect" the reserve clause in the contracts of every other club (Record, p. 426). Theoretically, therefore, a club might offer to a player the unfair alternative of a grossly inadequate salary or of retirement from professional baseball. In practice, however, this injustice does not occur; because the demand for skilled players always exceeds the supply (Record, p. 400), and the players are in such a position of natural advantage that they are protected against abuses of the reserve clause. The circumstances of this case were such that if any real instances of abuse could have been cited they would have been forthcoming at the trial. The showing made by the very few players who were produced as awful examples of the operation of the reserve system, is a powerful argument in its support. From the point of view of the club, the reserve clause is absolutely necessary, for otherwise a skillful player developed at the expense of one club would be snapped up by another and the clubs would always be engaged in a competition for players (Record, pp. 129, 130). Experience shows the disastrous results to the sporting public, to the clubs and to the players, which have always ensued at times when reservations have not been respected, and there has been unrestrained bidding for players (Record, pp. 427, 428).

The second important feature of the player's contract is that which gives to his club the right to

assign his contract to any other club operating under the National Agreement, and likewise makes it possible for any such club of higher classification than his own to "draft" the player from his club, even against its will. The provision for assignment is primarily for the benefit of the club; because it may find in the course of a season that a player under contract is not available for its purposes or that it can strengthen a weak place in its team by "trading" him for some other player (Record, p. 117). It should here be noted, however, that in the interest of the player there is a check on the exercise of the club's power of assignment. This check is furnished by what is known as the "waiver system," in accordance with which no player can be assigned against his will to a club of lower classification than his own, without securing waivers from all clubs of the classification in which the player is. An explanation of this system appears on page 399 of the Record.

The draft provision is of primary advantage to the player; because it prevents a club of inferior grade from holding down a young player with capacity for growth and depriving him of his chance to join a better team and receive higher compensation (Record, p. 127). One of the conditions of the draft is that the drafting club shall pay to the club from which the player is taken, a price which is fixed according to the following schedule: $2500 for a player drafted from Class AA, $1500

for a player drafted from Class A, $1200 for a player drafted from Class B, $750 for a player drafted from Class C, and $500 for a player drafted from Class D (Record, p. 88). In practice as a player goes higher he gets a better salary (Record, p. 117).

It is this source of revenue to the minor league clubs which enables them to exist (Record, p. 399). Under the operation of the draft system, minor leagues are really the training school for major league players. During the years 1911 to 1916 (both inclusive) major league clubs paid no less than $2,484,550 (Record, p. 398), to minor league clubs as the price of drafting and assigning players. This was in effect a reimbursement to the minor league of a part of the capital spent in developing the drafted men. It was an investment represented by the skill of the men themselves, the benefit of which was secured to the drafting or purchasing club by the contract in force for the current season, and as to the future, by the operation of the reserve clause.

The contracting club being thus protected by the provision for the assignment of playing contracts, and the player being thus protected by the system of drafts, it was necessary to protect major league clubs against one another by limiting the number of players that a club could have under contract during any season. A limitation of twenty-two (Record, p. 400), players was accord-

ingly embodied in the rules. This was confessedly a reasonable number, regard being had to accidents, sickness and the necessity of relieving pitchers and catchers in the case of games played in rapid succession. But for this limitation, a wealthy club might "sign up" numbers of skilled players and keep them idle, to prevent them from being secured by rival clubs. As it is, nothing like engrossing the market for players ever occurred. No club did, or could, retain more players than it needed. There was, and is, at all times a demand for skilled players in excess of the supply. After ingenious but futile attempts to evade the questions put to him, the principal witness for the plaintiff below finally made the desired admission to this effect (Record, foot of p. 125). It was not a case of many players competing for a few positions, but a case of clubs with many places to be filled competing for a relatively small number of first-class players. The contract of a club with a good player, and its rights under the reserve clause, were, and are, highly valuable assets representing a large investment of capital and constituting the basis of its hope of a winning team and a consequently successful season.

In reviewing the operation of the contract system (the legal effect of which will presently be discussed) the Court will bear in mind that competitive sport necessarily involves a high degree of organization. The individual player on a team

must be subject to rigid discipline (Record, p. 123); each team must be protected against the seduction of its players by other teams; the regulation of public games must be such as to insure decency and order; and the conditions under which league championships and world championships can be won must be prescribed with military precision. In the commercial world the individual is the unit and all presumptions are in favor of his freedom of action. In the world of professional sport, as in the army, the unit is not the individual, but the organization, and there can be only such individual freedom as is consistent with the good of the whole.

It now becomes proper to describe the organization of the Federal League and to summarize the facts which culminated in the alleged wrong to the plaintiff-in-error.

The Federal League began as a minor league, but in 1913 its promoters announced that thereafter the organization would become a major league and would announce itself as a contender for championship honors.

Unlike the central organizations of the National League and the American League, the Federal League is itself a corporation. It exists under the law of Indiana (Record, p. 78). During the period while the alleged cause of action was accruing, its stock was held in equal amounts by its eight constituent clubs, of which the plaintiff-in-error

was one. The cities represented by the original constituent clubs of the Federal League were Baltimore, Brooklyn, Buffalo and Pittsburgh in the East, and Chicago, Indianapolis, Kansas City and St. Louis in the West. In the second year (1915) Newark took the place of Indianapolis (Record, p. 83).

The certificates of stock were not left in the possession of the constituents, but were held by the Federal League corporation (Record, p. 122), as security for the faithful performance of the conditions of the "franchise," which evidenced the right of the holder to membership in the Federal League (Record, pp. 157-164). The central organization prescribed rules and regulations for the constituent clubs, and set forth a form of player's contract which contained the reserve clause and other features substantially similar to the major league contracts (Record. p 173). The right of a club to assign a player to another club, even against his will, was also a recognized part of the Federal League system (Record, p. 130).

The Board of Managers of the Federal League was made up of one representative of each of the constituent clubs (Record, p. 81). At the time the alleged cause of action accrued, the president of the Baltimore Club, Carroll W. Rasin, represented the Baltimore Club upon the Federal League Board.

The proposal of the Federal League to become

a major league and a party to the National Agreement raised for the National League and the American League an important question of policy. They decided that the introduction of a third major league into baseball competition would supply the public in some places with more baseball than they would pay to see, that the distribution of the few first-class players among twenty-four clubs instead of sixteen would necessitate the use of more second-rate players and so produce a quality of baseball which the critical American public would not tolerate, and that there were not in fact eight cities within easy reach of one another, each capable of supporting a first-class club (Record, pp. 443, 444). Accordingly the proposal of the Federal League promoters that the Federal League should become a party to the National Agreement and a constituent part of the system now complained of by the plaintiff-in-error was not accepted by the major leagues.

Thereupon, in the early part of 1914 the Federal League began its independent operations. The acquisition of grounds in the several cities of the proposed circuit was merely a question of money, but to secure first-class players was a different matter. All the players of the requisite skill and experience had been developed through the minor and major leagues operating under the National Agreement and all of their playing contracts for 1913 had the reserve clause in them (Record, p.

128). The question before the Federal League promoters was therefore this: Whether slowly and at great expense to build up a training system of their own and develop their own players, or to get quick results by approaching the players in organized baseball, offer them large sums of money, induce them to disregard their "reserve" obligations and so secure their services for Federal League clubs for the playing season of 1914.

Their decision was instantaneous and the raid on the "reserve" players began. In a few instances the major league clubs succeeded in holding their players, but in many instances the men yielded to the temptation of enormous salaries, "jumped" their reserve and signed up with the Federal League.

One instance in which a major league club succeeded in retaining a player was the case of Killifer, a noted catcher, whose contract for 1913 with the Philadelphia National League Club contained the usual reserve clause. When the raid began and before the Philadelphia Club and Killifer had negotiated for the ensuing season, the Chicago Federal League Club tempted Killifer with an offer of $5833.33 per season for three years, nearly twice his 1913 salary. Killifer yielded and signed with the Chicago Federal League Club a playing contract containing a covenant not to play with any other team. Thereupon, the Philadelphia National League Club, to save its team from the loss of an

essential player surpassed the offer of the Federal League Club, and Killifer disregarded his contract with that organization and reported for play with the Philadelphia Club. Thereupon the Chicago Federal League Club filed a bill against Killifer in the United States District Court for the District of the Western District of Michigan, the jurisdiction of Killifer's residence, and prayed an injunction to restrain Killifer from playing with the Philadelphia Club. The Philadelphia Club's motion for leave to intervene as a party defendant was granted, and it filed an answer averring that the Chicago Club had in the first instance induced Killifer to violate his reserve and that by thus soiling its hands it had disentitled itself to ask equitable relief. The Court, in an able opinion by Judge Sessions (215 Fed. Rep. 168) sustained this defense and dismissed the bill. On appeal, the decree was affirmed by the Circuit Court of Appeals for the Sixth Circuit (215 Fed. Rep. 289).

The Killifer case was an instance of what could be done for self protection by the major league clubs when a tempted player decided to return to his original allegiance. Where, however, the player persisted in violating his reserve or even in breaking an out-and-out contract, the major league club was helpless. This result ensued in the one case because the reserve clause created only an honorary and not a legal obligation and in the other because the playing contracts contained a

clause authorizing the club to dismiss a player at any time on ten days' notice, and this clause, in the opinion of most Courts, introduced such a lack of mutuality into the contract as made a Chancellor unwilling to grant specific performance. Decisions adverse to the specific enforcement in equity of these playing contracts were rendered in the following cases:

Metropolitan Exhibition Co. v. Ewing, 42 Fed. Rep. 198;

Brooklyn B. B. Club v. McGuire, 116 Fed. Rep. 782;

Metropolitan Exhibition Co. v. Ward, 9 N. Y. Supp. 799;

Arena Athletic Club v. McPartland, 41 App. Div. 352, 58 N. Y. Supp. 477;

Rutland Marble Co. v. Ripley, 10 Wal. 339;

Lee v. Chicago League B. Club, 169 Ill. App. 525.

In American League B. Club of Chicago v. Chase, 149 N. Y. Supp. 6, Judge Bissell rejected the contention that Organized Baseball was interstate commerce, but held it to be a common law monopoly.

An illustration of the seriousness of the effect on major league clubs of the successful effort of the Federal League to induce their players to break contracts, was the experience of the Cincinnati Na-

tional League Club. In the middle of the season of 1915 at a time when Cincinnati was leading its league in competition, three highly skilled players, Marsans, Davenport and Johnson, were seduced to jump their contracts and join Federal League clubs, with the result that Cincinnati dropped into last place (Record, pp. 402; 125).

In other words, the Federal League having failed in an effort to become a party to the National Agreement, proceeded to build itself up with materials torn from the structure of the major leagues. This inevitably caused hard feeling and led to crimination and recrimination. This is the explanation of the angry utterance of Mr. Johnson, President of the American League, as reported in the "New York Evening Sun" of March 5, 1914 (Record, foot of page 198).

In the course of the trial a constant effort was made by counsel for the plaintiff in error to make it appear that the major leagues feared the competition of the Federal League. It was not competition, in the commercial sense, which they feared—it was the seduction of their players, the consequent destruction of the morale of teams and a deterioration in the quality of the baseball furnished to the public (Record, p. 423).

During the season of 1914 the Federal League played its schedule, the eight clubs being Kansas City, Chicago, Indianapolis, Pittsburgh, Brooklyn, Baltimore, St. Louis and Buffalo. Before the opening of the 1915 season the Indianapolis fran-

chise was transferred to Newark. The way in which the attendance at the games fell off and the way in which the Kansas City and Buffalo clubs went to the wall is described in the testimony of James A. Gilmore, president of the Federal League, who tells the whole story of the hopeless Federal League experiment at page 339. The experiment was hopeless for the precise reason which had led the major league officers to reject the Federal League proposal in the first instance. It turned out, as foreseen by the experienced, that some of the cities in the Federal League circuit were not able to qualify as "major league towns" and that others were already supplied with as much baseball as the public would assimilate. The real reason for the failure of the Federal League was not any act or omission upon the part of the other leagues, but the inherent unsoundness of the enterprise as a business proposition.

It may be objected that the statement just made contradicts the finding of the jury, and it may be alleged that the verdict of the jury conclusively establishes that the Federal League did not die a natural death but was killed by the defendants in error. For the reasons presently to be advanced, the defendants in error contend that this issue was not fairly submitted to the jury. The cumulative effect of the charge was to make it possible for the jury to impute to the defendants in error liability for the failure of the Federal League even if they were satisfied that the only reason for the col-

lapse of the Federal League was that the successful operation of the major leagues made any independent enterprise of similar magnitude and in the same field a business impossibility.

By June or July, 1915, Gilmore, the controlling spirit in the Federal League councils, and his most intimate associates realized that they were headed for disaster (Record, pp. 339, 354). Kansas City and Buffalo clubs were in financial difficulties. The suggestion of reducing the circuit to six cities was repelled because experience shows that a league of less than eight clubs cannot succeed (Record, pp. 339, 340). Accordingly, he and his associates determined to take a gambler's chance and publicly to announce grandiose plans for "invading" New York which they did not intend to carry out, but which if pushed would have ended in a collapse fatal to the credit and stability of professional baseball (Record, p. 340).

Following this announcement, although the testimony varies as to the extent to which it was credited by the members of the National Commission and the officers of the major leagues, representatives of the Federal League were invited to a conference in New York on December 13th with officers and club presidents of the National League. Gilmore and Sinclair, the leading Federal League officials (Record, pp. 340, 414), attended the conference and an informal memorandum was drawn up as a possible basis for the substitution of

peace for war. The memorandum appears on page 169 of the Record.

Following this conference two things happened. First, a messenger was sent to Chicago to communicate the result of the conference to the president and other officers of the American League (Record, p. 415). Second, the Federal League officers called representatives of the several Federal League clubs to meet in New York on December 17th (Record, p. 341). Among those thus summoned was Rasin, the president of the plaintiff in error and representative of the Baltimore Club upon the Federal League board. Rasin attended the meeting, which was held at the Biltmore Hotel, during the day of the 17th. He was accompanied by Stuart S. Janney, Esq., a director of the plaintiff in error, who acted as its counsel, and also one Hanlon, another director and an experienced baseball man (Record, pp. 341, 342).

The officers of both major leagues and the members of the National Commission were favorable to an agreement based on the tentative memorandum and at their meeting at the Waldorf-Astoria on the day of the 17th, they were ready to discuss the matter with Federal League representatives and conclude a contract (Record, pp. 342, 415).

Meanwhile, at the Federal League meeting there was a lively discussion as to the course to be pursued. The upshot of the meeting was that a committee of three Federal League representatives,

consisting of Gilmore, Weeghman and Sinclair, was appointed to attend the meeting of the major leagues, with full authority to accept or decline anything that was offered (Record, p. 342).

The reason why this court must be asked to consider this portion of the testimony with unusual care is because the trial Judge in effect instructed the jury to disregard the testimony for the purpose for which it was offered by the defendants—namely, to show that Rasin, the official representative of the Baltimore Club on the Board of Managers of the Federal League, and Janney, the attorney for the Baltimore Club, had led the representatives of the major leagues to believe that the Federal League committee had full authority from all constituent clubs to negotiate with the major leagues the agreement now alleged to be unlawful. It is contended by the defendant-in-error that a private plaintiff cannot recover damages under Section 7 of the Sherman Act if the combination alleged to have injured the plaintiff was entered into by the defendants in the bona fide belief, induced by the plaintiff, that the plaintiff approved of the combination as made. The Court, however, instructed the jury to the effect that as there was nothing to show that the stockholders had authorized its president or its attorney to assent to an agreement between the Federal League and the defendants in error, it was legally immaterial whether or not Rasin and Janney had induced such a belief upon

the part of the defendants in error and so led them into action (Record, p. 498).

It is submitted, on behalf of the defendants in error, that for the purpose of testing the soundness of the ruling of the trial Judge on this point, it is proper to assume that the jury, if permitted to do so, would have accepted the version of the transaction presented by the defendants' witnesses. This must be the proper method to pursue; because the legal effect of the Court's instruction was to tell the jury that even if the testimony of the defendants in error was true in every particular, yet its cumulative effect could not be such as to constitute a defense.

The summary of facts about to be presented is accordingly based upon the testimony of defendants' witnesses without regard for such qualifications or contradictions as were supplied by the plaintiff's testimony.

The meeting at the Biltmore on December 17th was a meeting of the Board of Managers of the Federal League, called by its president through telegraphic summons. At the meeting representatives were present from the following clubs: Chicago, Pittsburgh, Newark, Kansas City, St. Louis, Buffalo, Brooklyn and Baltimore (Record, pp. 341, 342). Rasin, the president of the plaintiff in error, was the official representative of his club. Before the meeting Gilmore took Rasin aside and showed him a copy of the tentative agreement. When the

meeting was in progress Rasin suggested that a committee of three, consisting of Gilmore, Sinclair and another member to be selected by Gilmore, should attend the meeting of the major leagues and report back. Sinclair objected that he would not serve unless the committee had positive authority to complete negotiations and either accept or decline them. Rasin then moved that the committee go with full authority to accept or decline anything that was offered. The motion was put and carried. Gilmore then selected Weeghman as the third member of the committee and invited Rasin to accompany them (Record, pp. 342, 386, 387).

On the way to the meeting with the major leagues at the Waldorf-Astoria, Rasin, Janney and Hanlon called on the defendant, Herrmann, chairman of the National Commission. These men told Herrmann that a committee had been appointed at the meeting of the managers of the Federal League, with full power to act, to meet a similar committee of the American and National Leagues and the National Commission in joint conference that evening (Record, p. 415). Hanlon stated to Herrmann that the Baltimore men were present for the purpose of trying to secure a major league franchise, but Herrmann replied that he thought this was not possible because unanimous consent was necessary to change a circuit, and this probably could not be obtained.

Shortly thereafter the conference assembled at

the Waldorf-Astoria. The Federal League was represented by Gilmore, Sinclair, Weeghman and Rasin. The members of the National Commission, all the club owners of the National League, and a committee representing the American League were present (Record, p. 416). A stenographic record of the meeting was kept, and has been printed in full as an appendix to this brief. The trial Judge, on objection by the plaintiff, excluded the offer of the stenographic record as a whole (Record, p. 467, see also Appendix), but permitted a number of excerpts to be introduced. From the excerpts admitted and from the testimony of Herrmann and others it appears that at the beginning Herrmann asked Gilmore whether they (the Federal League committee) then had full power to act. Gilmore replied that they had (Record, pp. 344, 345). Sinclair gave the same assurance (Record, p. 416). Rasin was present throughout the meeting and at this particular time was sitting alongside of Gilmore. Herrmann expained that the committees of the American and National Leagues had delegated to the National Commission full power to act (Record, pp. 416, 417). A discussion of details was interrupted to allow to Mr. Janney on behalf of the Baltimore Club, to submit a request that a major league franchise be granted to Baltimore (Record, pp. 344-346, 417). It was decided by both the American League and the National League representatives that this could not be done (Record, p. 417). The discussion of the proposed agreement

was resumed, the general principles were agreed upon and an arrangement was made for a meeting to be held the next day between the National Commission and the Federal League committee, for conference. At no time during the meeting was anything said by anybody to the effect that the Federal League representatives were without authority to act (Record, p. 417). Rasin was present throughout the meeting. The best possible way to arrive at a clear understanding of the proceedings and results of this meeting and the effect of the presence of the president and the attorney of the Baltimore Club, it is submitted is to read the minutes as a whole, as printed in the appendix to this brief. For this reason they were also offered in evidence as a whole and their exclusion was made the subject of the thirteenth assignment of error in the Court of Appeals (Record, p. 68).

The meeting between the National Commission and the Federal League committee took place the following morning, December 18th. Details were discussed but no final decisions reached. The meeting adjourned to meet again in Cincinnati on December 22nd, for the purpose in the meantime, of getting such information as was obtainable with respect to placing an International League club (AA minor league) in Baltimore, and adjusting the situation in Buffalo (Record, p. 417).

After the New York meeting and before the peace agreement was signed, Gilmore, on behalf

of the conferees, offered Rasin as president of the Baltimore club, $75,000 as Baltimore's equitable proportion of the settlement money. Rasin declined the offer (Record, p. 349). On December 22nd at Cincinnati the peace agreement was signed by the National League, per Tener, President; the American League, per Johnson, President, and the Federal League, per Gilmore, President.

The agreement (which appears on page 170 of the Record) contained, among others, the following provisions:

A declaration that all Federal League players, managers and umpires were eligible to play in any club operating under the National Agreement; a provision that the lease of the Federal League grounds in Brooklyn should be assigned to the two major leagues upon payment by them of $200,000; a similar provision in the case of the Federal League grounds at Pittsburgh upon payment of $25,000; and a provision that a ten years' lease should be executed in favor of the major leagues by the Federal League Club of Newark of its grounds near that city, at an annual rental of $10,000, with an option to purchase.

The above provisions were made in satisfaction of the claims of the Federal League Clubs of Brooklyn, of Pittsburgh and of Newark. The case of Chicago had been provided for by giving to Weeghman of the Federal League an opportunity to purchase the stock of the Chicago National

League team on favorable terms. The rights of the St. Louis Club were adjusted by a consolidation with the St. Louis Club of the American League (Record, p. 337).

The Kansas City Club had gone to the wall and had no equities. The seventh section of the peace agreement was as follows:

> "The parties hereto on the date hereof have not arrived at an understanding of the rights and interests of the clubs in the Federal League and in the International League in the cities of Baltimore and Buffalo. Disposition of those interests has been referred to a committee of seven persons, to consist of James A. Gilmore, president of the Federal League, a representative of the Federal League Club in Baltimore to be selected by Mr. Gilmore, a representative of the Federal League Club of Buffalo, to be selected by Mr. Gilmore, E. G. Barrow, president of the International League of Professional Baseball Clubs and the three members of the National Commission. This committee is appointed with full power to act, and it is agreed that any conclusion arrived at by them shall be final and binding upon the parties in interest. A concurrence of four members of the committee shall bind the committee."

At the time the peace agreement was signed the members of the National Commission acting for the major leagues had no reason to suppose that negotiations for the adjustment of the rights of the

Baltimore Club were proceeding otherwise than satisfactorily. It was not until a meeting between the National Commission and the Federal League Committee in Cincinnati on or about January 5, 1916, that the Commission learned that the Baltimore people were not satisfied. Janney declined to serve on the committee to be appointed under paragraph seven and the committee was accordingly never enabled to act. (Record, p. 418).

Upon the basis of the facts above summarized, it is contended on the part of the defendants in error that if the execution and performance of the peace agreement of December 22, 1915, caused damage to the Baltimore Club, it was not merely a damage which they never intended to inflict, but resulted from a step which the defendants in error were induced to take by the representations and conduct of the president, and attorney of the plaintiff in error. The question is not whether Rasin, the president, had authority from the stockholders of the Baltimore Club to assent to the terms of the peace agreement. The point is that on the evening of December 17, 1915, he was fastened with actual knowledge that the major leagues were about to act in the honest belief that the Federal League Committee had authority to bind all the constituent clubs. If they had such authority, that is the end of the Baltimore Club's case. If they had not such authority, it was Rasin's duty to repudiate or correct the statements of Gilmore and Sinclair,

made in response to Herrmann's question and acted upon by the meeting. Having failed to make such correction or repudiation, it was his duty immediately upon his return to Baltimore to report to his Club what had happened, and what was about to be done, and to ask for instructions. It is the undisputed testimony that neither Rasin nor Janney called any meeting of the board of directors or the executive committee, or that the stockholders in the interval between December 17th and December 22nd, when the peace agreement was executed, or indeed until many weeks thereafter (Record, p. 306). By the terms of the Federal League organization, the president of the Baltimore Club was ex-officio a member of the Board of Managers of the Federal League, and the board of directors of the Baltimore Club had actually elected him a member of the Board of Managers for the years 1914 and 1915 "to represent the Baltimore Club" (Record, p. 467). Whether or not Rasin, either as president of the Baltimore Club, or as the representative of the Baltimore Club on the Board of Managers of the Federal League had antecedent authority to approve the execution of the peace agreement, his knowledge that it was about to be executed in the belief that it had been authorized by the Baltimore Club, was knowledge which it became and was his official duty to communicate to the Club. Had he communicated it, all the trouble which has ensued would have been avoided. His knowledge was the

knowledge of the plaintiff in error. If the plaintiff in error was in fact ignorant and innocent, so were the defendants in error. Where loss must fall upon one of two innocent persons, it will be allowed to fall on the person whose representative made the loss possible.

This proposition will be elaborated and the authorities cited in a subsequent part of this brief.

Following the making of the peace agreement the constituent clubs in the Federal League other than Baltimore, acquiesced in its provisions and the Federal League as an active playing organization ceased to exist.

Thereafter, as of No. 4058, March Term, 1916, the Baltimore Club brought an action against the present defendants in error in the United States District Court for the Eastern District of Pennsylvania and filed a declaration substantially similar to the declaration filed in the present cause. The case came on for trial and was tried on the part of the plaintiff by Stuart S. Janney, Esq., and Chester N. Farr, Esq. At a certain stage of the trial, the defendants produced the stenographic notes of the Waldorf-Astoria meeting. Counsel for the plaintiff asked leave to inspect them at adjournment of court. The next morning counsel for plaintiff asked leave to withdraw a juror, which was granted, and the case was discontinued (Record, p. 332). Immediately thereafter, counsel for the plaintiff addressed the following letter to coun-

sel for the defendants, and set forth in the Record at page 465:

"Law Office of Chester N. Farr, Jr.,
1018 Real Estate Building,
S. E. Corner Broad & Chestnut Streets.,

Philadelphia, June 15, 1917.

Frank P. Prichard, Esq., George Wharton Pepper, Esq., and Samuel M. Clement, Jr., Esq., Counsel for the National Commission, The National League of Professional Baseball Clubs and The American League of Professional Baseball Clubs, Land Title Building, Philadelphia, Pa.

Gentlemen:

As counsel for the Federal Baseball Club of Baltimore, Incoporated, we are writing you, representing The National Commission, The National League of Professional Baseball Clubs and The American League of Professional Baseball Clubs.

The Federal Baseball Club of Baltimore, Incorporated, is a holder of one-sixth of the stock in the Federal League of Professional Baseball Clubs of Indiana, and of a franchise.

On the 13th and 22nd of December, 1915, certain officers and directors of the Federal League of Professional Baseball Clubs of Indiana, assuming to represent and to have authority to act for all the stockholders, entered into agreements with the National League of Professional Baseball Clubs and the American League of Professional Baseball Clubs, whereby certain sums of money were to be paid

to and acts to be done in the interest of some of the ball clubs which were stockholders, together with the Federal Baseball Club of Baltimore, Incorporated, in the Federal League of Professional Baseball Clubs of Indiana.

These agreements are in prejudice of the rights of the corporation which we represent, and were affected in the interests of the parties above referred to purporting to represent the Federal League of Professional Baseball Clubs of Indiana.

As a stockholder of the Federal League of Professional Baseball Clubs of Indiana, the Federal Baseball Club of Baltimore, Incorporated, which we represent, protests against the provisions of the agreements in question and demands of you that no further payments be made to any of the parties specified under the provisions thereof until the rights of the Federal Baseball Club of Baltimore, as a stockholder in the Federal League of Professional Baseball Clubs of Indiana, have been properly adjusted. Should payments be made or any of the provisions of the agreements of December 13th and 22nd, 1915, be carried out after the notice in this letter, we desire to inform you that the Federal Baseball Club of Baltimore, Incorporated, will hold all the parties thereto to their full legal responsibility for any such acts.

Yours very truly,

CHESTER N. FARR, JR.
STUART S. JANNEY.
L. EDWIN GOLDMAN."

It will be perceived by the Court that the Baltimore Club in prosecuting its claim under Section 7 of the Sherman Act, was proceeding under the theory that it was not bound by the terms of the peace agreement and that it might proceed independently as a separate corporation to recover under Section 7 of the Sherman Act damages alleged to have been suffered by it from the illegal combination. Having gained actual knowledge from the record of the Waldorf-Astoria meeting that the peace agreement had been made in the belief that the Baltimore Club assented threto, it was put to its election whether to press its claim under the Sherman Act or to abandon its claim under that act and assert its rights as a stockholder in the Federal League to participate equitably in the benefits secured by the peace agreement. The act of discontinuing the suit and of serving formal notice on the defendants-in-error as above set forth, constituted an election between inconsistent rights, by which election the plaintiff-in-error is bound.

Having made its election as above set forth, the plaintiff-in-error thereafter repudiated it by bringing the suit that is now pending. The trial Judge instructed the jury in effect that because the Baltimore Club did not follow up the claim in its notice to counsel, its election to affirm the peace agreement and not to disaffirm it was not binding upon it, constituted no defense to this action, and

should be excluded from the consideration of the jury.

This point will likewise be considered hereafter.

A review of the important facts would not be complete unless it included a statement on the vital question of damage. If the Baltimore Club was not damaged in its property or business by anything made unlawful by the Sherman Act, then there is no liability resting upon the defendants-in-error. If there was no sufficient evidence to justify the jury in inferring damage, the judgment of the Court of Appeals should be affirmed for this reason alone.

It is doubtful whether a heavy damage-claim ever was submitted to a jury on the basis of such meager evidence.

The accounts of the Baltimore Club were put in evidence (Record, pp. 468-470), covering the entire period in issue, namely, from November 20, 1913, to January 31, 1916. During that period the club earned a deficit of $64,343.22.

The explanation of this result is given in the president's report to the stockholders, submitted January 27, 1916. This was after the peace agreement had been signed and when the present litigation was in contemplation. Under such circumstances the following admission is all the more significant:

"The stock of the corporation was offered

to the public and about six hundred citizens of Baltimore availed themselves of the opportunity and purchased the shares that were offered The Clubs organized in other cities constituting the circuit, reported themselves to be adequately financed. The best available players were acquired by all of the club owners, and the playing season of 1914 was inaugurated under peculiarly happy auspices.

During the playing season of 1914 the total attendance at Federal League games in Baltimore was second only to that of Chicago, and the conclusion from the figures is irresistible that with real major league playing strength and with the prospect of possible world's series contests, Baltimore would patronize major league baseball as well as any City of equal population.

During the playing season of 1915 the team was hopelessly last in the race, and was producing games of very mediocre calibre, nevertheless the patronage of the public was surprisingly liberal.

In starting the Federal League as a major circuit many mistakes were doubtless made—and your management desires to avoid no part of the responsibility for errors and omissions, that almost invariably occur, in beginning a new business—in the face of keen and expert opposition.

Bonuses were paid to players and long term contracts at high salaries were accepted, in a sincere effort to give the public the best quality of ball. Often times these highly advertised and highly paid players were not in

reality the best, and the large outlay became a useless expense.

With salaries on the basis they reached in 1914 and 1915 it was not possible that the enterprise would be an immediate financial success, but we did confidently hope that the League would become established, and that after three years when all contracts expired, the pay-roll could be reduced so as to bear a fair relation to revenue, with expenses thus reduced and with the acquisition of young players and their development, some reasonable return could be expected from the investment." (Record, pp. 320-1.)

In other words, the grounds for hoping that the Baltimore Club might some day make a profit were two: First, that the Federal League could be admitted to Organized Baseball as a contestant in the worlds series and, second, that after three or four years it might be possible to get better players at lower salaries.

This latter basis of anticipated profit was capitalized by one of the only two witnesses of plaintiffs-in-error who testified as to damage. Hanlon (Record, p. 220) assumed a condition in which the Federal League by a series of long-term contracts, would have a right to retain all their own players but would have an unrestricted right to take players trained in organized baseball. Upon this Utopian assumption he valued the Baltimore franchise as of the date of the peace agreement at ($75,000), and the players at $30,000 (Record, p. 218).

He (being the owner of the grounds) estimated the improvements at $100,000. The assumption being contrary to present or prospective fact, the evidentiary value of the estimated value of the franchise disappears.

The only other testimony as to damage was given by the witness Goldman (Record, p. 118). He was permitted to testify, under objection, that the cost of the equipment of the Batimore Club had been $82,649.46. For the reasons given in the objection (Record, p. 119) this testimony was obviously irrelevant. That its admission was harmful error appears from the fact that the verdict was for $80,000. If the defendants-in-error, had been called upon to meet nothing but Hanlon's wild guess, the jury might well have disregarded it. Permitted to consider the absolutely immaterial fact of the original cost, they assumed it as a basis and found a verdict for the nearest round sum. Upon the basis of the authorities hereinafter cited the admission of this testimony alone should be sufficient ground for a reversal of the judgment of the trial Court and an affirmance of the judgment of the Court of Appeals.

### (b) Discussion of Questions of Law.

The legal questions which it is proposed briefly to discuss may be stated as follows:

**1. Is the combination of clubs and leagues operating under the National Agreement within the provisions of the Sherman Act?**

2. Are damages under Section 7 of the Sherman Act recoverable by a corporate plaintiff whose president participated in and induced the transaction now complained of?

3. The plaintiff-in-error, a stockholder in the Federal League, which had become party to an agreement alleged to be illegal, discontinued, before judgment, a suit brought by it in disaffirmance of the agreement and served notice upon the defendants-in-error of intention to claim benefits thereunder. May the plaintiff-in-error subsequently repudiate its election, resort again to the theory of disaffirmance and so maintain the present action?

4. Was there any such evidence of pecuniary damage to the plaintiff-in-error as justified the submission of the question of damage to the jury?

5. Can the plaintiff-in-error maintain an action under Section 7 of the Sherman Act for the recovery of damages resulting from an injury to the Federal League in which it is only a stockholder?

## 1.

### "Organized Baseball," So Called, is Not Interstate Commerce and Does Not Constitute an Attempt to Monopolize Within the Sherman Act.

In support of the proposition that organized baseball is not within the Sherman Act we advance three reasons:

(a) In the first place, the making of money out of the local output of human effort and skill, independently of any relation to the production of any article of commerce, is not interstate commerce and does not become such merely because of the incident of interstate travel.

(b) In the second place, competitive athletic sports for public entertainment are fit subjects of local, not of national, regulation.

(c) In the third place, the Sherman Act deals only with business which might be conducted with or without restraints and proceeds to declare certain restraints in such cases unlawful; whereas the "World's Series" games cannot be continued at all unless under the restraint of elaborate interleague organizations and the Sherman Act ought not to be so interpreted as to make this great and popular event an impossibility.

(a) *Personal effort, not related to production, is not a subject of commerce; and the attempt to secure all the skilled service needed for professional baseball contests is not an attempt to monopolize commerce or any part of it.*

It is believed that in no decided case has it ever been held that personal effort, considered apart from production, is a subject of commerce.

Section 6 of the Clayton Amendment to the Federal Anti-Trust Laws (38 Stat. L. 731) provides as follows:

"That the labor of a human being is not a commodity or article of commerce."

Apart from this declaration, however, it must be clear that a labor union is not a commercial combination, although it aims at monopoly in the sense that it attempts by peaceful means to make every man ineligible for a job unless he carries a union card. The American Federation of Labor is a nation-wide organization—a league of leagues; but the subject-matter of its organization is merely human service. No matter what interstate features the Federation might develop, it could never be regarded as a combination to monopolize commerce, as long as the direct object of its regulation was nothing but the output of human effort.

Playing baseball, whether for money or not, is a striking instance of human skill exerted for its own sake and with no relation to production. In the case of an exhibition of athletic skill, as in the case of dramatic performance, the on-lookers derive nothing but enjoyment. When the surgeon operates the patient receives a tangible benefit from the operation. When the teacher teaches, the educational result to the willing student is definite and valuable. The baseball player, the actor, or singer the surgeon and the teacher all make a living out of their skill. In each case something is communicated to others. But nothing is involved in the transaction which can properly be regarded as a subject of traffic; and except where teaching is done

by correspondence the intercourse feature is merely incidental. It is because playing, acting, singing and operating must all be done locally that a sharp distinction is to be drawn between these activities and teaching; because when teaching is systematically done by correspondence, the act of communcation is the vital thing, and that is an interstate act. It is possible, in popular phrase, to speak of "selling" a sensation to an audience or education to a class, just as it is sometimes said that insurance is "sold." But the subject-matter of sale is really absent in all these cases and unless interstate intercourse is the distinctive feature of the transaction there can be no interstate commerce.

In Paul v. Virginia, 8 Wallace, 168 (1868), it was decided that the habitual negotiating contracts of fire insurance in another State is not interstate commerce. The making of the contract is essentially a local act. It is followed by no tangible consequence except the payment of money. No matter how much use is made of the vehicles of transportation, the intercourse feature is incidental merely and cannot be availed of to give an interstate character to the essential act.

Attempts to distinguish other forms of insurance from fire insurance have been persistently made, but this Court has steadily adhered to the principle underlying its original decision. In Hooper v. California, 155 U. S. 648 (1894), the Court made the following statement:

"It is evident, then as we have said before, that the attempt to so distinguish between policies of marine insurance and policies of fire insurance, as to reach the deduction that there is a constitutional difference between the business of a corporation issuing policies of one kind and that of a corporation dealing in policies of the other kind, which affects the question of a State's authority to control the business of either, is based upon a fundamental misconception of the nature of the constitutional provision relied upon. It ignores the real distinction upon which the general rule and its exceptions are based and which consists in the difference between interstate commerce or an instrumentality thereof on the one side and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the States; and would exclude State control over many contracts purely domestic in their nature.

"The business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce. The making of such a contract is a mere incident of commercial intercourse, and in this respect there is no difference whatever between insurance against

fire and insurance against 'the perils of the sea.' "

In significant contrast to the facts which determine these decisions were the facts in International Textbook Co. v. Pigg, 217 U. S. 91 (1909). In this case the subject-matter of the transaction was the giving and imparting of nation-wide instruction, which of itself would not have sufficed to stamp the activity as interstate commerce. But the distinctive feature of the enterprise in question was this: That nothing whatever was done by the school authorities in the locality of the student; the business of the school was educational intercourse conducted through correspondence; and whatever was done locally was the assimilation by the student of the material shipped from a distance. Mr. Justice Harlan, speaking for tht Court, used the following language:

> "It is true that the business in which the International Textbook Company is engaged is of a somewhat exceptional character, but, in our judgment, it was, in its essential characteristics, commerce among the States within the meaning of the Constitution of the United States. It involved, as already suggested, regular and, practically, continuous intercourse between the Textbook Company, located in Pennsylvania, and its scholars and agents in Kansas and other States. That intercourse was conducted by means of correspondence through the mails with such agents and scholars. While

this mode of imparting and acquiring an education may not be such as is commonly adopted in this country, it is a lawful mode to accomplish the valuable purpose the parties have in view. More than that; this mode—looking at the contracts between the Textbook Company and its scholars—involved the transportation from the State where the school is located to the State in which the scholar resides, of books, apparatus and papers, useful or necessary in the particular course of study the scholar is pursuing and in respect of which he is entitled, from time to time, by virtue of his contract, to information and direction. Intercourse of that kind, between parties in different states, particularly when it is in execution of a valid contract between them—is as much intercourse, in the constitutional sense, as intercourse by means of the telegraph—'a new species of commerce,' to use the words of this Court in Pensacola Telegraph Co. v. Western Union Telegraph Co., 96 U. S. 1, 9. In the great case of Gibbons v. Ogden, 9 Wheat. 1, 189, this Court, speaking by Chief Justice Marshall, said, 'Commerce, undoubtedly, is traffic, but it is something more; it is intercourse.' Referring to the constitutional power of Congress to regulate commerce among the States and with foreign countries, this Court said in the Pensacola case, just cited, that 'it is not only the right but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.' This principle has never been modified by any subsquent decision of this Court."

The question in the case was whether a student who had received under contract the benefit of instruction could successfully defend a suit for the tuition fee on the ground that the school had not complied with a Kansas statute requiring foreign corporations to file a certain certificate as a condition precedent to the right to sue. The case was a hard one and all equities favored a decision that the local statute placed an unfair burden upon the plaintiff. Even so, there were two dissents, indicating that the result was reached not without misgiving. This Court should not, it is submitted, seek to extend by liberal interpretation the scope of this decision. On the contrary, the Court will be inclined to note the contrast between the Pigg case and the case at bar. Here the central feature of the business is the local exhibition of skill. Each movement made by each player in the game is spontaneous; it is a new fact in history. The fact that the players come across the State line is a subordinate fact. That they brought bats and balls with them instead of purchasing them locally is another subordinate fact. In the Pigg case the educational intercourse through correspondence was the essential fact. Here the admission fee is paid to witness a local exhibition of energy and skill. It is like the distinction that may sometime become necessary between musical and dramatic performances on an interstate schedule, which are clearly not interstate commerce, and the transmission over

wires from a central source, of the sounds and sights of an opera or a play—which, upon the analogy of the Pigg case, might be held to be a proper subject of Congressional regulation.

That the production of grand opera on an interstate schedule is not interstate commerce was decided in

Metropolitan Opera Co. v. Hammerstein,
147 N. Y. Suppl. 532 (1914),

In this case the Court said:

"The production of opera or other theatrical exhibition before an audience in exchange for the price of tickets involves none of the elements of trade or commerce as commonly understood. There is no dealing with an article of trade or commerce nor any use made of the instrumentalities of commerce. The holder of the ticket pays a certain price as a consideration for the privilege of experiencing the gratification of an artistic sense. Such a transaction is as far removed as possible from the commonly accepted meaning of trade or commerce. If the production of opera is trade or commerce, it would seem to follow that every museum which exhibits pictures, every university which gives courses of instruction of lectures, every lawyer who prepares a brief, every surgeon who performs an operation, every circus, moving picture show, exhibiting pugilist, actor, or performer is engaged in commerce. In the construction of statutes the usual and natural meaning is to be given to words, and it can

scarcely be urged that a construction which would include the above in 'trade or commerce' would give to the words their usual and natural meaning. If the production of opera is not commerce, the fact of its production, sometimes at one place and some times at another, does not make it so. If, then, the thing or matter directly affected by the covenants in question is not commerce, the fact that incidentally in preparation for, or to enable it to give, the production, plaintiff does some act or enters into transactions of interstate commerce and uses the instrumentalities of interstate transportation, and to that extent is at times engaged in interstate commerce, does not bring these covenants within the provisions of the Act of Commerce, for the reason that they do not relate to such acts or activities and the latter are not directly affected thereby. The effect thereon, if there be any, is only incidental, secondary or remote. Such acts and activities are neither an essential part of the production of opera nor a necessary incident thereto."

In the case of In re Duff, Bankrupt, 4 Fed. Rep. 519 (1880), Choate, D. J., said, page, 521:

> "This bankrupt was a theatrical manager. It did not appear that he had any other business. He bought costumes, machinery, etc., for use in his business. It was also shown that on a few occasions he had sold some such property. I think he cannot be considered a merchant or tradesman within the meaning of the statute."

In re Oriental Society, Bankrupt, 104 Fed. Rep. 975 (1900), MacPherson, D. J., said:

> "A corporation engaged in giving theatrical performances is, of course, not engaged in manufacturing, printing, or publishing. In my opinion, also it is clearly not trading or following mercantile pursuits, in the ordinary meaning of these words. A trader or merchant is one who either sells, or buys and sells, and a theatrical society does neither. It gives performances, of one kind or another, to which the public are attracted by the skill of the performers. But the skill is not sold; it is merely exhibited for hire. The fact that the society must buy scenery and stage appliances and furniture, which it may afterwards sell again, is of no importance. This is a mere incident, and not the principal business of the bankrupt."

People v. Klaw, 106 N. Y. Supp. 341 (1907), was a case in which the defendants were indicted for unlawfully creating and maintaining a monopoly, or conspiring to commit an act injurious to trade or commerce in violation of the penal code of the State of New York. It was established that the owners of certain theatres throughout the country arranged for booking attractions so as to enable their companies to save expense by making continous tours, and agreed not to produce attractions controlled by rival interests, and also only such attractions as agreed not to play in rival theatres,

and not to play in certain cities during a specified time, and not to play in other theatres covered by such booking contracts. These facts were held not to constitute the crime charged in the indictment. The Court in its opinion says:

> "The next question to be considered is whether the owning, controlling, and leasing of theatres, and the producing of plays and entertainments of the stage, and the booking of contracts for the production of plays, is an article of trade or commerce, and hence whether the defendants committed acts injurious to trade or commerce. . . .
>
> "If theatres are not absolute necessaries of life (in re Clifford v. Branden, 2 Camph. 368), if a theatrical business is not trade or commerce (In re Oriental Society, 104 Fed. 975) if a theatrical manager cannot be considered a tradesman (In re Duff, 4 Fed. 519), if a corporation buying or selling stock is not a trader (In re Surety Guarantee and Trust Co., 121 Fed. 73), if the business of insurance is not trade or commerce (In re Paul v. Virginia, 75 U. S. 168; Hooper v. California, 155 U. S. 648; New York Life Insurance Co. v. Cravens, 178 U. S. 289), then how can it be successfully urged that plays and entertainments of the stage are articles and commodities of common use?
>
> "In the light of the lexicographers' definition of 'trade,' 'commerce,' 'play,' 'entertainment' and 'theatre,' and of the foregoing decisions, it seems to me that plays and entertainments of the stage are not articles or useful

commodities of common use, and that the business of owning, leasing and controlling theatres, and producing plays therein, is not trade, and that, therefore, the defendants did not commit acts injurious to trade or commerce.

. . .

"After an exhaustive examination of the subject of what is trade and commerce, I have failed to find any decision, nor has my attention been directed to any decision, classifying theatrical amusements as articles of 'trade' and 'commerce.'"

It was brought out in the testimony produced at the trial of this case that prior to the signing of the agreement, referred to in the record as the "Peace Agreement," a director or stockholder of the plaintiff club filed a complaint with the United States Attorney General to the effect that the business conducted by Organized Baseball was in violation of the Sherman Anti-Trust Law, but the Department of Justice, by Assistant Attorney General Todd, held that it did not violate the anti-trust laws (Record, p. 436).

Recently in the matter of the Federal Trade Commission v. The Vaudeville Managers' Protective Association et al., the Department of Justice advised the Federal Trade Commission that it took the view that the business of presenting and executing theatrical entertainments is not commerce within the constitutional sense, and that, therefore, such a combination as was involved in that

case did not fall within the Acts of Congress prohibiting combinations in restraint of interstate commerce.

The point decided in the Hammerstein case, *supra*, must be carefully distinguished from the point disposed of, on demurrer to a complaint, in Marienelli v. United Booking Offices, 227 Fed. Rep. 165 (1915). In the latter case, the combination held to be within the Sherman Act was not an arrangement inter sese of corporations engaged in producing dramatic performances, but was a combination between a series of theatres and persons engaged in theatrical brokerage according to which the brokers gained the exclusive right to act as agent for the theatres in booking performers on an interstate schedule. The broker made with each actor a contract that the actor should travel from State to State and perform en route for specified theatres. From the point of view of the broker, the entire business consisted in the negotiation of a contract to travel and perform. The broker was not interested in the service rendered or the skill exhibited by the performer. It was brokerage resulting in interstate travel. As such, the broker was engaged in interstate business and his combination with the local theatres was a combination in restraint of interstate commerce. The District Judge (the case was settled without appeal) reconciled his decision with the Hammerstein case by conceding that "a combination of local playhouses might not be in restraint of interstate commerce, though

it affected the interstate movement of actors or scenery" (p. 170). When he contrasts such a case with the case of a traveling troupe of players he is dealing with the interstate phase of the question; he was not called upon to decide, and does not decide, whether the term "commerce" is under any circumstances applicable to dramatic productions. The only case in which the Marienlli decision appears to have been cited have been cases in which the principal element was the sale, lease or transportation of goods. U. S. v. United Shoe Machinery Co. 234 Fed. Rep. at p. 144; Motion Picture Patents Co. v. Universal Film Mfg. Co., 235 Fed. Rep. at p. 401.

The only case which we have found in which any Court has passed upon the question whether or not Organized Baseball is within the Sherman Act is the case of American Baseball Club of Chicago v. Chase, 149 N. Y. Supp. 6 (1914). In this case the Court said.

> "The question has also been raised on this motion as to whether the National Agreement (so-called) and the rules and regulations adopted pursuant thereto, violate the Sherman Act. The novel argument is presented with much earnestness by the learned counsel for the defendant that the combination formed by the operation of the National Agreement and the rules and regulations of the National Commission thereunder, with which the defendant is connected through his contract with the plaintiff, is in direct violation of 'An Act to

protect trade and commerce against unlawful restraints and monopolies,' in force July 2, 1890, and popularly known as the 'Sherman Anti-Trust Law.' It is apparent from the analysis already set forth of the agreement and rules forming the combination of the baseball business, referred to as 'Organized Baseball,' that a monopoly of baseball as a business has been ingeniously devised and created in so far as a monopoly can be created among free men; but I cannot agree to the proposition that the business of baseball for profits is interstate trade or commerce, and therefore subject to the provisions of the Sherman Act. An examination of the cases cited by the defendant confirms rather than changes my conclusion.

"Commerce is defined by the Century Dictionary as an

> 'interchange of goods, merchandise or property of any kind; trade, traffic; used more especially of trade on a large scale carried on by transportation of merchandise between different countries, or between different parts of the same country, distinguished as foreign commerce and internal commerce.'

"The defendant urges that under the National Agreement baseball players are bought and sold and dealt in among the several States, and are thus reduced and commercialized into commodities. A commodity is defined as:

> 'That which is useful; anything that is useful or serviceable; particularly an ar-

> ticle of merchandise; anything moveable that is a subject of trade or of acquisition.'

"We are not dealing with the bodies of the players as commodities or articles of merchandise, but with their services as retained or transferred by contract. The foundation of the National Agreement is the game of baseball conducted as a profitable business, and if this game were a commodity or an article of merchandise and transported from State to State, then the argument of the defendant's counsel might be applicable. Judge Grosscup in U. S. v. Swift & Co. (C. C.), 122 Fed. Rep. 529 (1903) at page 531, said:

> 'Commerce, briefly stated, is the sale or exchange of commodities. But that which the law looks upon as a body of commerce is not restricted to specific act of sale or exchange. It included the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings—that directly bring about the sale or exchange.'

"In the Knight Case, 156 U. S. 1 (1894), 15 Sup. Ct. 254, 39 L. Ed. 325, it is said (p. 13):

> 'Contracts to buy, sell, or exchange goods to be transported among the several States, the transportation and its instrumentalities, and articles bought, sold, or exchanged for the purpose of such transit, may be regulated, but this is because they form part of interstate trade or commerce.'

"Baseball is an amusement, a sport, a game

> that comes clearly within the civil and criminal law of the State, and is not a commodity or an article of merchandise subject to the regulation of Congress on the theory that it is interstate commerce."

In the opinion just quoted the Court refers to the argument of counsel that under the National Agreement players are bought and sold like chattels. The Court might well have called attention to the inconsistency of contending that it was illegal to make chattels out of men and also that it was interstate commerce to deal with the chattels so made. Interference with personal liberty is not interstate commerce, but merely an occasion for resort to the Courts for relief or for exercise of police power by the legislature.

The plaintiff-in-error relies upon Hoke v. United States, 227 U. S. 308, the White Slave case. But that case would be in point only if Congress had imposed a penalty upon the transportation of players for baseball purposes. It is, of course, true that a person may move or be moved in interstate commerce and that Congress may regulate such movement. But when Congress has not regulated movement as such, then the doing of an act essentially local is not converted into an interstate act merely because people came from another State to do it.

The instructions given to the jury by the trial Judge in the case at bar included an instruction

that the system of Organized Baseball constituted an attempt to monopolize. This was the theory upon which the plaintiff's case was rested—that the defendants had conspired to monopolize interstate commerce in baseball and in so doing had injured the plaintiff.

If this Court assents to the argument above outlined, the foundation of the case of the plaintiff-in-error will be removed; for if Organized Baseball is not interstate Commerce, it is not within the Sherman Act; and in that event the peace agreement was not a step in a conspiracy to monopolize a part of such commerce.

On the other hand, even if professional baseball is interstate commerce and even if the peace agreement might have been construed as a contract in restraint thereof, it is submitted that the evidence fails to disclose anything amounting to monopoly or an attempt to monopolize within any legal meaning that may properly be assigned to those words.

As applied to the facts of this case, the term "monopoly" might be used in either of two senses: It might be intended to refer to a monopoly of the business of producing baseball, or to a monopoly of the services of baseball players. It is evident from the charge that it is in the latter sense that the Trial Judge used the term, because he speaks of the features of Organized Baseball "which have led the Court to consider that it was a monopoly,

principally the reserve clause and the ineligible list features" (Record, p. 495).

The question accordingly is whether the facts disclosed by the record justify the Trial Judge in instructing the jury that the defendants-in-error had attempted to monopolize the available baseball talent of the country. There is only one way in which talent or service or labor can be monopolized and that is by buying it up in excess of the legitimate needs of the employer. If the running of a man's business requires a certain number of employees and by fair and legitimate means he succeeds in supplying himself with the number that he requires, he is not monopolizing the labor market even if, when he is satisfied, other employers find themselves short. The point at which the process of monopolizing or "engrossing" the market begins, is the point at which the employer proceeds to secure control of more labor than he needs for the purpose of hindering or crippling his competitors.

That nothing of the sort was attempted in the present case is entirely clear from the evidence.

In the first place, it is conceded that the number of skilled baseball players in the United States at any time is smaller than the number of places to be filled. It will be remembered that one of the most important regulations in the Organized Baseball system is the strict limitation of the number of players which any club is permitted to have under contract at any one time.

In the second place, it is averred (Record, p. 31) that the plaintiff and other constituent members of the Federal League went into the market and in competition with the defendant corporations, engaged as its players more than three hundred men having special aptitude or skill in the playing of baseball. This averment is significant for two reasons. In the first place it shows that the Federal League clubs were in fact able to secure an average number of skilled players of thirty-seven per club, a number far in excess of the major league limit. Second, taken in conjunction with the testimony of the witness Goldman on page 125 of the record, it indicates that in order to secure these men the Federal League had in many cases to take them from the ranks of Organized Baseball by tempting them either to jump their contracts or violate their reserves.

The evidence is, therefore, that the defendants-in-error were strictly limited by their own regulations in the number of players that they could retain; that they never did in fact contract with more players than they needed; that there was always a demand for skilled players greater than the supply, but that the Federal League succeeded in obtaining a number of players far in excess of the major league limit and in many instances by enticing them away from their prior allegiance. The only charge or allegation at any time made by the Federal League against the defendants-in-error in regard to interference with players has relation

to the case of such players as had thus been seduced from their original employment by Federal League agents. There is no averment in the declaration that anything done by the defendants-in-error caused the plaintiff-in-error to pay too high a price for the players which it secured.

Under these circumstances it is submitted that the elements of a monopoly of the market for baseball talent are wholly lacking upon this record and that the instructions complained of in the XIX assignment of error in the Court of Appeals were altogether erroneous.

As already suggested, however, the question whether or not there was an attempt to monopolize becomes immaterial if the Court holds that Organized Baseball is not within the scope of the Sherman Act for the reasons outlined above, it is earnestly contended that such should be the decision of the Court.

(b) *Sporting Events are Peculiarly the Subject of Local, as Distinguished from National, Control.*

If professional baseball is interstate commerce, certain important consequences will follow. While it might be decided that only the National Agreement and not either of the major leagues is an unlawful combination, the decision would nevertheless involve the conclusion that each of the leagues is engaged in interstate commerce and free, therefore, from local regulation.

If it required a constitutional amendment to empower Congress to prohibit the local sale and consumption of intoxicants, it would seem that a like amendment is needed to authorize Congress to prohibit the playing of baseball, or to prescribe a uniform playing contract for all clubs, or to regulate their play, or to limit it to certain days in the week.

Yet if professional baseball is interstate commerce Congress may do these things under the Constitution as it stands and the States are shorn of their right to regulate the scheduled games played within their borders. No State, on such a theory, could impose any of the license fees or taxes upon the franchise of the clubs or make any of the regulations which have been declared invalid in the case of corporations engaged in interstate commerce. Congress might busy itself with regulating all the details of the national game and supersede the National Commission by a regulatory body fashioned upon the analogy of the Interstate Commerce Commission. Such a conclusion is in the nature of a *reductio ad absurdam.*

Such a limitation on local self-government and such an extension of the powers of Congress is not justified any great public necessity. A State is entirely competent to reach and deal with any evil in the field of sport requiring legislative remedy. This is true as respects the provisions of players' contracts and the protection of the rights of the

public in the matter of charges for admission, and other matters.

As already pointed out, this is not a case in which national control of an activity is necessary to preserve the even flow of traffic and intercourse between States. Here each contested game is essentially local in character. The mere fact that one of the teams hails from a distant State is of no more significance than that a contestant in a horse race is foreign-owned or foreign bred. The transportation of players and paraphernalia is a purely incidental and subordinate feature. Moreover, since Congress has plenary powers of control over transportation, if there were any reason to regulate baseball teams in transit, it could do so by appropriate legislation.

The more the situation is analyzed and its various aspects considered, the clearer it becomes that there is nothing in the nature or development of professional baseball to justify the extension to it of Federal regulatory power.

(c) *Such Organization as Is Necessary for the Protection of the World Series Games Is Not Unlawful.*

The Federal League was a highly centralized combination for the control of competitions between its constituent clubs. The system worked out by the defendants-in-error through years of experience was closely imitated by the plaintiff-in-error

and the other seven Federal League clubs as far as the organization and operation of a single league was concerned. It is not disputed by anybody that such a highly organized system is essential to the production of the thing that the public desires—namely, keen competition between several clubs, representing as many different cities and striving against one another for the league championship. Hence the admission, freely made by counsel for the plaintiff-in-error during the trial, that the National League and the American League are not themselves illegal organizations either in their object or in their method of attaining it.

The contention of illegality is limited to the combination effected through the National Agreement. In other words, it is said in effect that combinations in restraint of commerce in baseball are legitimate to the extent necessary for league competitions but not to the extent necessary for inter-league competitions.

The Court is asked to note the unsoundness of the distinction thus sought to be made.

Everything that can be said to justify, on the ground of necessity, the National League organization as applied to contests for the National League pennant, can be said with the like cogency respecting the National Agreement as applied to the world's series. If the National Agreement is an illegal document it must be because it regulates or restrains the freedom of action of each of the parties to it and of each of the clubs in the constituent

leagues. But there is not a single feature of the National Agreement that is not necessitated by the end in view, namely, the simultaneous contests for the pennant in each league, followed by the greatest of all sporting events, the contest for the world's championship between the two pennant-winners.

After everything is said that can be said about "reserve clauses," eligibility lists, assignment of players' contracts and every other feature of the organization, the fact remains that no part of the elaborate system was evolved for any other purpose except to create the situation in which the public takes so wholesome and vital an interest.

When a court dissolves such a trust-combination as the Standard Oil Company or the American Tobacco Company, or the Northern Securities Company, the judicial objective in all cases is better and cheaper oil or tobacco, or transportation for the public. Separate companies can furnish oil and tobacco and transportation. The economic theory underlying the Sherman Act is that such separate production in the long run results in greater public advantage than is attained by production under conditions of combination and restraint.

In the case of the National Agreement the thing sought to be produced, namely, dramatic and sensational contests between teams playing under precisely the same conditions, is attainable only by combination and restraint.

The question in the case before the Court is not whether the world's series games can be con-

ducted to greater public advantage if the National Agreement is dissolved, but whether Congress intends that the crowning feature of the national game shall be done away with. Assuming that baseball is interstate commerce, it is true that Congress and the Department of Justice might insist upon such an unnecessary and unpopular result; but no statute should be construed as applying to combinations to regulate sport unless Congress has plainly indicated an intention that this should happen. Not only is there no such indication in the Sherman Act, but the Court will be slow to construe a statute enacted to promote free competition in a field in which competition is the life of trade as if it were applicable to a case in which life depends not upon competition but upon the complicated and complete restraint and regulation thereof.

Summing up the foregoing argument, we submit:

First, that human energy, skill and labor, considered as ends in themselves and not in relation to the production of any article of commerce, are not subjects of commerce and that combinations to regulate them are not within the Sherman Act.

Second, that while transit and other forms of interstate intercourse are subject to the regulatory power of Congress, yet this fact does not give jurisdiction to Congress where the transit is incidental to the activity and not its main element.

Third, that sporting competitions are peculiar-

ly the subjects of local and not of national regulation.

Fourth, that the Sherman Act should not be construed to apply to a combination absolutely essential to the existence of so obviously a wholesome and popular sporting event as the world's series.

2.

THE PLAINTIFF-IN-ERROR CANNOT MAINTAIN AN ACTION FOR CONSPIRACY AGAINST DEFENDANTS WHO, TO THE KNOWLEDGE OF THE PRESIDENT AND REPRESENTATIVE OF THE PLAINTIFF-IN-ERROR, WERE ACTING IN THE BELIEF THAT AN INTER-LEAGUE SETTLEMENT WAS DESIRED BY ALL.

If the National League, the American League and the other parties to the National Agreement were engaged in an attempt to monopolize interstate commerce then any agreement between them and the Federal League clubs looking toward the elimination of the latter from competition was an illegal agreement and the making of it was a punishable act.

The Trial Judge fell into the error of supposing that unless the president of the plaintiff in error had been authorized to assent to some specific terms of settlement, the fact that he took part in the negotiation of the agreement as made was legally immaterial. This led him to instruct the jury as complained of in the XX assignment of error in the Court of Appeals (Record, pp. 70, 487).

The effect of his ruling, if sustained, would be to enable a corporation, acting through an agent without specific instructions or authority, to participate in negotiating an illegal settlement, to take its chance of getting acceptable terms and then, if dissatisfied with the terms offered it, to sue the other negotiators as for a criminal conspiracy.

Thus to state the consequence of the Trial Court's position is the most effective way to brand that position as erroneous.

No open-minded person reading the evidence in this case can have any doubt whatever that the real grievance of the Baltimore Club is not the fact that the peace agreement was made, but that it did not contain a sufficiently liberal provision for the Baltimore Club.

On page 217 of the Record the plaintiff's witness Hanlon testified as follows:

> "When the Federal League organized the people of Baltimore were very desirous of having major league ball. There wasn't any other way we could get it only to start out to try to run an independent league."

This statement can mean only one of two things: either that the Baltimore Club was consciously attempting a forlorn hope or was uniting with others in starting an independent league as a means of forcing from Organized Baseball the concession of a major league franchise to Baltimore.

There can be no doubt that the Baltimore Club

was eager for participation in the alleged monopolistic combination and appears to have discovered its unlawfulness only when the profit-sharing stage was reached and the distribution of benefits proved unsatisfactory.

The witness Janney, attorney for the plaintiff-in-error, admits (Record, p. 306) that he actually told Gilmore that his client might consider a proposition to receive under the peace agreement $75,000 in cash and an assumption of liability by Organized Baseball for the contracts of the players and the lease of the grounds.

The legal situation thus presented has two aspects.

If Rasin were the plaintiff it is clear that he could not recover. This appears to have been the view of the Trial Judge (see charge, at p. 496 of Record). It probably will be conceded by the plaintiff in error.

The reasons why Rasin could not recover are two: First, because he knew that the defendants-in-error were acting in the belief that he was assenting to the transaction and remained silent when it was his duty to speak. Were he the plaintiff he would be estopped.

In Morgan v. Railroad Company, 96 U. S. 716, 720 (1877), it was held that a party may not deny a state of things which by his culpable silence or misrepresentations he has led another to believe existed, if the latter has acted upon that belief.

So also in Dickerson v. Colgrove, 100 U. S. 578 (1879), this Court said: "The vital principle (of estoppel in pais) is that he who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden. It involves fraud and falsehood and the law abhors both."

This is a proposition so fundamental that no further citation of authorities will be attempted.

In the second place, were Rasin the plaintiff, he could not recover because he himself was a participant in the transaction now alleged to have been a criminal conspiracy. He and the attorney for the Baltimore Club were present to obtain for the club whatever advantages the settlement could be made to yield. They actually urged that Baltimore be admitted to the benefits of the National Agreement and be awarded a franchise in one of the major leagues. (Record, p. 305.) They received, considered and rejected a proposal for the payment of a large sum of money (Record, p. 306). On the theory that the defendants-in-error were stifling competition and promoting monopoly by buying out rivals, Rasin and the defendants-in-error were in pari delicto.

If Rasin's conduct or silence would have estopped him had he been plaintiff, it estops his principal. The corporation is estopped because it

is responsible for the wrongdoing of its agent and through its agent, misrepresented the facts.

It is not a question of Rasin's authority to make the contract on behalf of his corporation. Whether he had authority or not if he committed a tort in the apparent sphere of his agency the corporation would be responsible.

The misleading of others, whether by misrepresentation or by silent acquiescence, to their undoing is a wrong which if committed in the course of an apparent agency binds the principal and places him in the same position of estoppal as the agent.

In National Bank v. Munger, 95 Fed. Rep. 87 (1899), the Court, in speaking of this question, said:

> "Or, to state the proposition shortly, one may not avail himself of the results of his agent's fraud without responsibility for the fraud. Bank v. Cushman, 121 Mass. 490; Loring v. Brodie, 134 Mass. 453; Atlantic Cotton Mills v. Indian Orchard Mills, 147 Mass. 268, 17 N. E. 496; First Nat. Bank of New Milford v. New Milford, 36 Conn. 93; Holden v. Bank, 72 N. Y. 286; Bank v. Dunbar, 118 Ill. 625, 9 N. E. 186."

See, also:

> Union Bank v. Campbell, 4 Humphrie (Tenn.) 394 (1843);
> Smith v. Farrell, 66 Mo. App. 8 (1896);
> Hovey v. Blanchard, 13 N. H. 145;

North River v. Aymar, 3 Hill (N. Y.) 262 (1842);
Bank of U. S. v. Davis, 2 Hill (N. Y.) 451 (1842).

Furthermore, if Rasin's knowledge would have estopped him had he been plaintiff, his knowledge has a similar effect upon his principal. His knowledge was the knowledge of his corporation. His duty of disclosure was two-fold. He was president of the Baltimore Club. He was the representative of the Baltimore Club on the board of managers of the Federal League. In both capacities he was under a duty to inform the directors and stockholders of plaintiff-in-error of what was occurring. Had he done so, this litigation would have been avoided.

He had ample opportunity to report to his corporation. Both he and the club's attorney returned to Baltimore immediately after the Waldorf-Astoria conference on December 17, 1915. They continued to communicate with the defendants-in-error for some time, but they called no meeting of the executive committee, of the Baltimore board or of the Baltimore stockholders. Knowing that the peace agreement was about to be signed and that they had induced belief in their assent to such a step, they kept their knowledge to themselves—and now their corporation must suffer for it.

The corporation cannot escape from the position in which it would be had its president and representatives made full disclosure of essential

facts. It is bound by his knowledge. He is estopped. His corporation is estopped.

In Armstrong v. Ashley, 204 U. S. 282-83 (1906), this Court said:

> "The company also insists that it ought not to be charged with any knowledge of any fact which was known only by Walter and the local attorney. The company asserts, first, that Walter and the local attorney were not its agents; and, in any event, by reason of their fraud, knowledge by the company should not be imputed to it because of the knowledge of its agents. The company asserts that Walter was simply the president of its local board, composed of the stockholders in the company residing or to be found in Washington, and that his action was not the action of an agent under such circumstances. It also asserts the same thing in regard to the local attorney and denies liability for their acts. We think the position can not be maintained. . . . Transactions of a local nature were put in charge of the local attorney, who represented the company at his locality, and loans were consummated by him and papers sent to him by the company for such action as was necessary for the completion of a loan. *The knowledge of the attorney and of the president of the board in regard to a matter coming within the sphere of their duty, and acquired while acting in regard to the same and sending to the company in New Orleans their report which it was their duty to make, must be imputed to the company.*

*The fact that those agents committed a fraud can not alter the legal effect of their acts or of their knowledge with respect to the company in regard to third parties who had no connection whatever with them in relation to the perpetration of the fraud, and no knowledge that any such fraud had been perpetrated.* There is no pretense of any evidence that the defendants had any connection with these alleged frauds, and no pretense that they had any knowledge of their existence, if they did exist. In such case the rule imputing knowledge to the company by reason of the knowledge of its agent remains." (The italics are ours.)

McCaskill v. United States, 216 U. S. 504 (1909), was a suit brought by the United States to cancel a land patent. It was held that knowledge of the fraud on the part of the officers, who were also the principal stockholders and whose interests were identical with the corporation was properly to be imputed to the corporation itself.

To the same effect is Rogers v. Vicksburg, 194 Fed. Rep. 65 (1912).

From the above authorities it appears that where the agent (whether the principal be a natural person or a corporation) alone acts for the principal in a given transaction, in which the principal obtains something which he is seeking to hold, the principal is bound with notice of whatever was known to the agent.

The other aspect of the legal situation grows

out of the fact that (if the peace settlement was unlawful) Rasin and the defendants-in-error were in pari delicto.

Suppose that the Waldorf-Astoria conference (being, by supposition, a conspiracy to do an illegal thing) had injured some other club than Baltimore and that the injured clubs had sued Baltimore and the other represented clubs for conspiracy. Clearly Baltimore would have been liable. Rasin was the representative of the Baltimore Club on the Federal League Board. He was, of course, without authority to conspire with his fellow managers to do an unlawful thing. But what he did he did, not for himself, but for the benefit of his club. It is well settled that under such circumstances a corporate principle is liable for the tort of conspiracy committed by its officer without authority but in the course of his representation.

> "Where an officer, agent or servant of a corporation maliciously or wrongfully, but in the course of his employment, enters into a conspiracy to defraud or commit other wrongs against another for the benefit of the corporation, the latter will be liable. 'It is very clear that a corporation can be guilty of a combination or conspiracy with other corporations or persons aimed at and accomplishing the injury of other corporations or persons. It is a mere legal entity, impersonal, and in itself incapable of so doing; but it is moved by human beings, is operated by human agents, and is thus an active person, not only for damage

done in the breach of contracts, but for torts doing others harm. It will not avail either to say that it has no power within the scope of its authority to do wrong, and can do only the lawful things, contemplated by the State in the bestowal of its charter, and that, therefore, so far as its agents make it do wrong, its acts are outside the field of its legal power, ultra vires, and void, not binding the corporation, and thus that no tort binds it. Such was the old common-law rule, but it is completely overruled. . . . That doctrine may do as to contracts, but it cannot plead this doctrine to screen itself from its wrongs done to others against their will and rights.' "

> Fletcher's Cyclopedia Corporations, Vol. 5, Sec. 3343, citing West Virginia Transportation Co. v. Standard Oil Co., 50 W. Va. 611 (56 L. R. A. 804), and other authorities.

But if Rasin's participation in the so-called conspiracy would have subjected his corporation to liability had his corporation been made defendant, it follows that his corporation must be treated as being in pari delicto with the other conspirators when it attempts to claim as a plaintiff.

Whichever aspect of the legal situation is considered, the result is the same. The plaintiff-in-error cannot recover in this action because it is estopped by its agent's knowledge and because his participation in the conspiracy places the plain-

tiff-in-error in pari delicto with the defendants-in-error.

It follows that the instructions given by the Trial Judge to the jury were on this subject erroneous and that the VI, VII, XIII and XX assignments of error in the Court of Appeals were entirely proper.

3.

THE PLAINTIFF-IN-ERROR, HAVING ELECTED TO AFFIRM THE PEACE AGREEMENT, CANNOT REPUDIATE THE ELECTION AND SUE IN DISAFFIRMANCE.

The facts in regard to the matter of election were summarized above (page 38 of this brief).

It will not be disputed that the Federal League representatives who signed the peace agreement purported, in doing so, to bind the Baltimore Club as well as the others. It is admitted (Record, p. 466) that they were "assuming to represent and to have authority to act for all the stockholders" in the Federal League.

Assuming but not conceding their lack of antecedent authority to bind the Baltimore Club by their act, the plaintiff-in-error thereupon acquired the right to elect between two distinct and inconsistent courses. One was to repudiate the agreement. The other was to ratify it and claim a benefit thereunder.

This clean-cut alternative was presented to the stockholders of the Baltimore Club in that portion of President Rasin's report which reads as follows:

> "This corporation may recover from those who have assisted in extending the monopoly of Organized Baseball through the destruction of the Federal League, and the elimination of its competition, three times the damage thereby suffered by it as provided by the Clayton Anti-Trust Act. This damage includes the destruction of franchise value, the loss, if any, on a sale of the grounds and the conversion of the team from an asset to a liability. It also includes the loss of prospective business profits.
>
> "The corporation has also the right to an accounting of the benefits of the settlement obtained by our former associates and the right to share equally therein when established" (Record, p. 323).

Following this statement came the institution of a suit in the United States District Court in Philadelphia for treble damages, which suit was discontinued before judgment on the plaintiff's motion.

After this discontinuance, the right to elect between the two stated courses still remained. Should the Baltimore Club repudiate or should it affirm? If the decision should be in form of acquiescence in the peace agreement, nothing was needed except to

give notice to this effect to the representatives of the National League and the American League. Notice was in fact given in the most formal and effective way by the letter of June 15, 1917, which stated:

> "As a stockholder of the Federal League of Professional Baseball Clubs of Indiana, the Federal Baseball Club of Baltimore, Incorporated, which we represent, protests against the provisions of the agreements in question and demands of you that no further payments be made to any of the parties specified under the provisions thereof until the rights of the Federal Baseball Club of Baltimore as a stockholder in the Federal League of Professional Baseball Clubs of Indiana, have been properly adjusted. Should payments be made or any of the provisions of the agreements of December 13th and 22nd, 1915 be carried out after the notice in this letter, we desire to inform you that the Federal Baseball Club of Baltimore, Incorporated, will hold all the parties thereto to their full legal responsibility for any such acts."
>
> (The entire letter will be found on page 38 of this brief.)

It is submitted that the Trial Judge entirely misapprehended the significance of this notice. Its legal effect was to communicate to those who had been defendants in the discontinued action (the present defendants-in-error) the election of the

plaintiff to accept, as to them, the agreement previously made on the plaintiff's behalf.

The Trial Judge told the jury not to consider this notice "inasmuch as it appears from the uncontradicted evidence in the case that it (the plaintiff) never did in point of fact elect to make any such claim or to assert any claim to a share in the proceeds of said agreements, but on the contrary brought suit against the defendants to recover damages for the making of said agreement" (Record, p. 498). In other words, the Trial Court ruled that after giving formal notice of ratification, it was competent for the plaintiff-in-error to resort again to the theory of disaffirmance.

In so ruling the Trial Court overlooked a principle that is fundamental.

When an agent without authority assumes to bind his principal, the latter may refuse to recognize what has been done. He may, however, reconsider his refusal and elect to ratify or affirm unless the other party has changed his position. Hence, in this case, discontinuance, followed by notice of ratification, was entirely proper.

*But when once the decision to ratify has been made and communicated to the other party the agreement as to such other party becomes as binding upon the plaintiff as if antecedent authority had been given to the agent to bind him.*

The Trial Judge seemed to be of opinion that he was dealing with a question of estoppel. In

point of law, he was confronted with a question, not of estoppel, but of agency.

> "The substance of ratification is confirmation of the unauthorized act or contract after it has been done or made whereas the substance of estoppel is the principal's inducement to another to act to his prejudice." 31 Cyc. 1247.

Having confused the doctrines of ratification and estoppel, he failed to perceive that ratification once communicated is irrevocable.

This aspect of the doctrine of ratification is discussed in Andrews v. Aetna Life Insurance Co., 92 N. Y. 596 (1883). In this case it was held that a principal upon being informed of an unauthorized act of an agent, has a right to elect whether he will adopt it or not, and so long as the condition of the parties is unchanged cannot be prevented from such adoption by the fact that the other party prefers to treat the contract as invalid, but his election to ratify once made, is irrevocable.

> "If," observed Buller, J., in Smith v. Cologan, 2 T. R. 188 (1787), "with a full knowledge of all the circumstances he (the principal) adopted the defendants' acts for a moment, he ought to be bound by them. If he had intended to insist on his right to recover the money from the defendants he should never have looked to others at all. But afterwards when G. K. & Co. were likely to fail,

then he considers the defendants as his debtors."

Said Maxey, J., in Russ v. Telfener, 57 Fed. Rep. 973 (1893):

> "It is a familiar maxim that ratification has a retroactive efficacy and relates back to the inception of the transaction and when deliberately made with a knowledge of the circumstances as before stated, cannot be revoked or recalled."

It is clear from the authorities that even less evidence of ratification is required as between the principal and third persons than as between the principal and the agent. Even between principal and agent, however, it is well settled that if an agent without authority, assumes to make a settlement on behalf of his principal, the principal will be held to have made an irrevocable ratification if he manifests an intention to call the agent to account for the price received under the settlement agreement.

> Sanders v. Peck, 87 Fed. Rep. 61 (1898).

It is true that this case is complicated by the fact that the plaintiff-in-error was repudiating the provisions of the peace settlement as between the Baltimore Club and its associates in the Federal League; but this is merely a complication, not a

modifying circumstance. As between the Federal League and all its clubs, on the one hand, and Organized Baseball on the other, the letter was a clear and unequivocal notice that Baltimore Club would stand upon its rights as a stockholder in the Federal League and, as such, would seek an equitable share in the benefits accruing under the peace agreement.

If ever there was a case in which any reasonable amount of evidence of ratification should be regarded as sufficient, it is the case in which a principal is seeking to hold his agents and former associates as conspirators. Here they made a settlement, assuming to bind the principal. The parties with whom the settlement was made acted in good faith. The principal, with full knowledge of the facts, and after a clear statement of alternative rights, gives notice of intention to make his agents account for a share of the settlement money. How in the name of common justice can he be permitted subsequently to repudiate his ratification and maintain an action for conspiracy against them?

To repudiate a contract is to incur liability. The same thing is true when the contract is made by one's authorized agent. To attempt to withdraw a communicated notice of ratification where a settlement has been made without authority, is an attempt that comes not only too late, but with exceedingly bad grace. The principal is as much bound as if he had himself signed.

4.

THERE IS NO SUCH EVIDENCE OF PECUNIARY DAMAGE AS JUSTIFIED A SUBMISSION OF THE QUESTION OF DAMAGE TO THE JURY.

Neither the declaration in this case nor anything said at the trial makes it clear just what is the basis of the damage-claim of plaintiff-in-error.

It will be remembered that the Baltimore Club and the other Federal League clubs came into existence with Organized Baseball already in the field. The Baltimore Club must have contemplated either combination with Organized Baseball or competition with it.

If the Baltimore Club was formed and its capital invested with the expectation of making profits by joining an illegal combination, it has no standing to recover damages for its disappointment.

On the other hand, if the claim is for damages sustained in operating against the competition of Organized Baseball, the plaintiff-in-error was bound to indicate with some degree of certainty what the damage was and how sustained. In other words, the problem was this—*by what criterion can it be determined what the business and property of the Baltimore Club would have been worth if the National League and the American League had been lawfully competing with it, i. e., as independent leagues not operating under the National Agreement?*

The measure of damage must be the difference between the worth of the business and property affected by the alleged unlawful acts of the defendants-in-error as compared with their worth had the defendants-in-error acted lawfully.

But there never was a time, according to the plaintiff, when conditions of competition were legal. There is no period of time during which there were operations which can be taken as an index of what the business or property was worth. In point of fact the Baltimore Club never earned a penny. It always operated at a heavy loss. Assuming, but not admitting, that the operation of Organized Baseball under the National Agreement caused this loss, what is there except wildest conjecture upon which to base the assumption that if there had been no National Agreement its business would have been profitable and that the difference would have been $80,000 or any other sum?

This is precisely the kind of a case in which the courts have held that the evidence is not sufficient to justify a verdict for the plaintiff. This principle is clearly set forth in

Central Coal & Coke Co. v. Hartman.
111 Fed. Rep. 96 (1901).

a case decided by the Circuit Court of Appeals for the Eighth Circuit. This was an action brought by Hartman against the Coke Company for treble damages which he claimed the defendants had inflicted upon his business by their violation of the

Sherman Anti-Trust Law. Plaintiff alleged that he, with the defendants and others, had formed a coal club to control prices of coal in Kansas City and to restrain commerce among the States; that he had withdrawn from the club and that thereafter the defendants would not sell him coal at other prices than those which they had established for sale at retail, and that this action caused him a loss of a large portion of his business. Speaking of the measure of damages, Judge Sanborn says (p. 98):

> "The only damages claimed in the petition, and the only losses which the plaintiff sought to prove at the trial, were the loss of some of the expected profits of his business of buying and selling coal between January 1, 1897, and January 25, 1899. Compensation for the legal injury is the measure of recoverable damages. Actual damages only may be secured. Those that are speculative, remote, uncertain, may not form the basis of a lawful judgment. The actual damages which will sustain a judgment must be established, not by conjecture or unwarranted estimates of witnesses, but by facts from which their existence is logically and legally inferable. The speculations, guesses, estimates of witnesses, form no better basis of recovery than the speculations of the jury themselves. Facts must be proved, data must be given which form a rational basis for a reasonably correct estimate of the nature of the legal injury and of the amount of the damages which resulted from it, before a judgment of recovery can be lawfully rendered. These are

fundamental principles of the law of damages. Now, the anticipated profits of a business are generally so dependent upon numerous and uncertain contingencies that their amount is not susceptible of proof with any reasonable degree of certainty; hence the general rule that the expected profits of a commercial business are too remote, speculative, and uncertain to warrant a judgment for their loss. . . . And one who seeks to recover for the loss of the anticipated profits of an established business without proof of the expenses and income of the business for a reasonable length of time before as well as during the interruption is in no better situation. In the absence of such proof, the profits he claims remain speculative, remote, uncertain, and incapable of recovery. In Goebel v. Hough, 26 Minn. 252, 258, 2 N. W. 847, 849, the Supreme Court of Minnesota said:

> "'When a regular and established business, the value of which may be ascertained, has been wrongfully interrupted, the true general rule for compensating the party injured is to ascertain how much less valuable the business was by reason of the interruption, and allow that as damages. This gives him only what the wrongful act deprived him of. The value of such a business depends mainly on the ordinary profits derived from it. Such value cannot be ascertained without showing what the usual profits are.'

"The truth is that proof of the expenses and of the income of the business for a reason-

able time anterior to and during the interruption charged, or of facts of equivalent import, is indispensable to a lawful judgment for damages for the loss of the anticipated profits of an established business."

American Sea Green Slate Co. v. O'Halloran, 229 Fed. Rep. 77 (1915), decided by the Circuit Court of Appeals, second Circuit, was also an action brought to recover treble damages under the Sherman Anti-Trust Act. The Slate Company, which was the defendant below, was a corporation composed of various producers of slate located in the State of Vermont, and the plaintiff contended that the defendant was a combination of the sort forbidden by the Sherman Act. Judge Lacombe, delivering the opinion, says (p. 79):

"To recover under the seventh section, plaintiffs must show that, as a result of defendants' acts, actual damages were sustained—damages in some amount which is susceptible of expression in figures. These damages must be proved by facts from which their existence is logically and legally inferable—not by conjectures, or estimates. They must not be speculative, remote, or uncertain. As we understand the law, a jury may not merely *guess* that plaintiff lost $1000 or $10,000, which they might have made, even if they feel reasonably sure that some loss was sustained. They cannot award damages as they do for pain or suffering in an action for personal injuries, or for reputation as they do in a libel suit,

> "That was a defect in the original Sherman Act from the viewpoint of the individual trader; the treble damage section frequently did not give him relief. He could only get such relief by stirring up the Government to apply for an injunction and dissolution of the combination. That defect is now cured by the Clayton Act, which gives the injured party equitable relief to terminate the illegal combination, which is hurting him."
>
> Judgment for the plaintiffs was reversed.

It will not help the plaintiff-in-error to argue that the claim is for damages resulting from the making of the peace-pact. In that event the problem becomes even more impossible of solution. If it is not possible to tell what the business and property of the Baltimore Club would have been worth during the period when it was operating at a loss, it is altogether impossible to determine the same question for the subsequent period when the club was not operating at all. In Central Coal & Coke Co. v. Hartman, supra, a witness whose testimony was like that of Hanlon in the present case, undertook to estimate what business would have been done if conditions had been different. His testimony, like Hanlon's, was found to be based on an incorrect assumption.

Judge Sanborn pointed out that litigants by a mere guess cannot be permitted to estimate the money out of the coffers of their opponents and that the plaintiff had first estimated the loss of the

sale of from nine to thirteen cars of coal per month, but on cross-examination had estimated his loss from twelve to fifteen cars a month, and that his books showed that his purchases of coal in the winter preceding the period he had complained of were only two cars a month. Commenting on this the Court says (p. 102):

> "Testimony of this character is nothing but conjecture, and it presents no substantial evidence to make certain the profits that were lost, if any. Expected profits are in their nature, contingent upon many changing circumstances uncertain and remote at best. They can be recovered only when they are made reasonably certain by the proof of actual facts, which present data for a rational estimate of their amount. The speculations and conjectures of witnesses who know no facts from which a reasonable accurate estimate can be made form no better basis for a judgment than the conjectures of the jury without facts. . . . There were no data for a rational estimate of the profits at any time during the continuance of the business; nothing from which the jury could reasonably infer that the business was profitable before, less profitable or profitless after, the plaintiff's withdrawal from the club. Much less were there any facts established which made the amount of the expected profits lost reasonably certain. The interested witness who alone estimated this loss himself testified that he knew no facts from which a rational finding could be made, and his testimony shows that his estimates were

nothing but the wildest conjecture. The result is that the verdict is a speculation of the jury, based on the conjectures of an interested witness, unsupported by the proof, or the knowledge of any facts from which the plaintiff's loss, or its amount, could lawfully or rationally be inferred, and it cannot be sustained."

Judgment for plaintiff was reversed.

It will be difficult at first for the Court to credit the statement, but a study of the record will show that there is no proof of damage whatever except this wild conjecture and the testimony of Goldman as to the original cost of the Baltimore Club's improvements (Record, p. 119). It has already been pointed out that it was this objectionable testimony which misled the jury (p. 44, supra). It is confidently submitted to be reversible error to allow a jury in a case like this to consider original cost. Such cost throws no light whatever upon the value of the business done, or to be done, and none upon the value of improvements and other expenditures made for the purposes of the business. It will be remembered that the Baltimore Club did not own its park. It had no property which had value in itself apart from its value in the business.

The Court is asked to visualize the situation as it would have existed if the Baltimore Club and the Federal League had organized and operated in the face of lawful competition.

There would have been the same need of a well-balanced circuit—eight cities capable of supporting major league ball. There would have been no world's series games to stimulate the hope of ultimate participation. There would have been the same need for high-class players in the presence of the demand of the existing and established major leagues already too great for the supply. There would have been the same necessity to include in the circuit cities like St. Louis, already supplied with two major league clubs, and Pittsburgh, struggling to support one, Chicago also supplied with two, and New York and Brooklyn with three.

Does it not require mere rashness to predict anything but the probable failure of such a venture, and does it not involve the wildest speculation to assume a profit or fix its amount?

Not merely in cases arising under Section 7 of the Sherman Act, but in tort and contract cases generally, the rule against speculation is strictly enforced.

In Leonard v. Abner-Drury Brewing Co., 25 App. D. C. 171 (1905), which was an appeal from a decree dismissing the bill in equity for injunction, the Court says, on page 176:

> "But damages for acts which might work commercial ruin are not always recoverable at law, the rules of which relating to the measure of damages do not ordinarily warrant the assessment of consequential damages of an un-

> certain or speculative character, such as loss of trade and profits and the failure of credit and business. For such injuries the remedy at law, even under the statute giving a three-fold recovery, is inadequate and incomplete. In such cases, then, the jurisdiction of equity attaches, and to accomplish the ends of justice the writ of injunction will issue to prevent the doing or the continuance of the wrongful acts."

In Howard v. Stillwell & Bierce Mfg. Co., 139 U. S. 199 (1891), which was a suit to recover the money due for building a mill, the defendants contended that the mill had not been finished within a reasonable time, as a result of which they had suffered loss of profits which they otherwise would have made upon the sale of flour. At the trial the defendants offered to prove the market value of flour and the fact that they could have sold 200 barrels per day during the time when the mill should have been finished but was not. The Court overruled the defendants' offer and a verdict was rendered for the plaintiff. The Court affirmed the judgment, saying (p. 206):

> "The grounds upon which the general rule of excluding profits, in estimating damages, rests, are (1) that in the greater number of cases such expected profits are too dependent upon numerous, uncertain and changing contingencies to constitute a definite and trustworthy measure of actual damages; (2) because such loss of profits is ordinarily remote

and not, as a matter of course, the direct and immediate result of the non-fulfillment of the contract; (3) and because most frequently the engagement to pay such loss of profits, in case of default in the performance, is not a part of the contract itself, nor can it be implied from its nature and terms."

In Cincinnati Gas Co. v. Western-Siemens Co., 152 U. S. 200 (1893) the rule quoted in Howard v. Stillwell & Bierce Mfg. Co. is again emphasized.

In McCormick v. U. S. Mining Co., 185 Fed. Rep. 748 (1911), decided by Circuit Court of Appeals, Eighth Circuit, the Mining Company had been enjoined from removing any ore from its mines and after the injunction had been dissolved brought suit against the defendants, who had been sureties upon the injunction bond, claiming loss of profits as damages. At the trial evidence was given estimating that the mines contained approximately 230,000 tons of ore. Evidence was also given on the cost of mining and extracting the metal from the ore and the market price of the metal at different times while the injunction was in force. It appeared that plaintiff would have had to mine at least 100 tons a day to realize the same relative amount of profits and that this amount of ore had never been mined, either before the injunction was issued or after it was dissolved, but that being the owner of other mines not covered by the injunction, plaintiff had preferred to operate them. The

Court says that the testimony of the witness, that, but for the injunction, plaintiff could and would have taken out 100 tons per day was expression of an opinion or conjecture. And continues (p. 751):

> "The damages sought to be recovered are based on an alleged loss of profits. The law with respect to loss of profits being the basis of a recovery in an action for damages is that profits which would have been realized, but for the act of defendant, and which are not open to the objection of uncertainty or remoteness, may be recovered, but profits depending upon numerous uncertain and changing contingencies are too definite and untrustworthy to constitute a just measure of actual damages."

Judgment for plaintiff reversed and a new trial granted.

In Simons-Mayrant Co. v. Atlantic Coastline R. Co., 207 Fed. Rep. 387 (1913), District Court, District of South Carolina, the rule that recovery cannot be sustained upon speculation, guess or estimates of witnesses upon which the jury must speculate, is followed. See page 400 of the decision citing Central Coal & Coke Co. v. Hartman, supra.

Montgomery v. Chicago B. & Q. R. Co., 228 Fed. Rep. 616 (1915), decided by the Circuit Court of Appeals, Eighth Circuit, was a suit brought by the plaintiff against the Railroad Company for damages under Section 8 of the Act to Regulate

Commerce of February 4, 1887. Plaintiff had been in the restaurant business and thereafter the defendant railroad opened a restaurant in the same city. The railroad charged a published schedule of rates for supplies shipped to the plaintiff, but made no charge for supplies shipped to its own restaurant. Plaintiff claimed loss of profits. The Court below dismissed the action. Judgment was affirmed. The Court says (p. 620):

> "Ordinarily reparation for unjust discrimination has been awarded for damages reasonably definite and ascertainable, such as excessive freight charges, loss upon specific shipments under express contract, due to delay and established fluctuation in market, and the like. In Central Coal & Coke Co. v. Hartman, 111 Fed. 96, 49 C. C. A. 244, this Court held that the loss of profits from the destruction or interruption of an established business may be recovered where the plaintiff makes it reasonably certain by competent proof what the amount of his loss actually was, but that the actual damages which will sustain a judgment must be established, not by conjectures or unwarranted estimates of witnesses, but by facts from which their existence is logically and legally inferable. The speculations, guesses, or estimates of witnesses, form no better basis of recovery than the speculations of the jury themselves. Here the plaintiff alleges merely that his business has fallen off and his profits have correspondingly decreased; but this result, as has been said, might flow from

many causes. It might be due to general depression, to fluctuations in prices, or, upon the face of the petition, to the accommodation of its passengers and employees by the eating house of the defendant carriers. None of these causes would be chargeable to the defendant, and resort must be had to the realm of speculation to determine what part, if any, of this falling off in patronage could be legally traced to wrongful conduct on the part of the carrier."

5.

IF THE SYSTEM OF ORGANIZED BASEBALL VIOLATES THE SHERMAN ACT, THEN THE INJURY, IF ANY, RESULTING THEREFROM WAS TO THE FEDERAL LEAGUE, A CORPORATION, AND SUIT TO RECOVER DAMAGES FOR SUCH INJURY CAN BE MAINTAINED ONLY BY THE FEDERAL LEAGUE.

According to the declaration, the testimony introduced at the trial and the brief of plaintiff-in-error, the claim for damages of plaintiff-in-error is based solely upon injury to the Federal League, namely, "the wrecking and destruction of the Federal League, of which plaintiff-in-error was a constituent member." As a result of the wrecking of the Federal League there was left no club with which the plaintiff-in-error could play baseball, and it was accordingly compelled to abandon the enterprise.

The plaintiff-in-error styles itself a constituent member of the Federal League. It was in fact a stockholder and there is nothing in the record to show that it had any rights other than those of a stockholder.

Assuming, therefore, but not admitting, that the facts as charged against the defendants-in-error constitute a violation of Sections 1 and 2 of the Act, the injury, if any, occasioned thereby was to the Federal League, a corporation, and an action at law to recover damages therefor under the Seventh Section of the Sherman Act should have been brought by the Federal League and not by the Baltimore Club independently as a stockholder therein.

United Copper Co. v. Amal. Copper Co., 244 U. S. 261;

Loeb v. Eastman Kodak Co., 183 Fed. 704;

Ames v. American Telephone & Telegraph Co., 166 Fed. 820;

Corey v. Independent Ice Co., 207 Fed. 459;

Fed. Stats. Anno., Vol. 9, p. 717, and cases there referred to.

It is, therefore, submitted that this furnishes an additional reason to show that the plaintiff-in-error had no standing to main this action.

Upon the whole, we contend that on this record there is no legal basis for a judgment against the defendants-in-error, and that the judgment of the Court below should be affirmed.

Respectfully submitted,

GEORGE WHARTON PEPPER,

BENJAMIN S. MINOR,

SAMUEL M. CLEMENT, JR.,

*Of Counsel for the Defendants-in-Error.*

# Appendix.

## STENOGRAPHIC MINUTES OF THE WALDORF-ASTORIA MEETING OF DECEMBER 17, 1915.

## DEFENDANTS' EXHIBIT "B" FOR IDENTIFICATION.
6/14/17. J. R. P.

MEETING OF THE SPECIAL COMMITTEES
appointed by the
NATIONAL AND AMERICAN LEAGUES OF PROFESSIONAL BASEBALL CLUBS, AND THE NATIONAL COMMISSION WITH REPRESENTATIVES OF THE FEDERAL LEAGUE.

For Consideration of a readjustment of the existing baseball situation.

Held at the Waldorf-Astoria Hotel, New York City, Friday, December 17, 1915.

(Meeting set for 8 o'clock P. M., called to order at 9.10 P. M.)

Present:

THE NATIONAL COMMISSION:
MESSRS. AUGUST HERRMANN,
B. B. JOHNSON and
JOHN K. TENER.

REPRESENTING THE FEDERAL LEAGUE:

MESSRS. JAMES A. GILMORE,
H. F. SINCLAIR,
CHARLES WEEGHMAN and
C. W. RASIN.

REPRESENTING THE AMERICAN LEAGUE:

MESSRS. JOSEPH J. LANNIN,
CHARLES COMISKEY,
BENJAMIN S. MINOR,
COLONEL JACOB RUPPERT,
CHARLES SOMERS and
CAPTAIN T. L. HUSTON.

REPRESENTING THE NATIONAL LEAGUE:

MESSRS. JAMES E. GAFFNEY,
ROBERT H. DAVIS,
JOHN C. TOOLE,
CHARLES H. EBBETS,
EDWARD J. MCKEEVER,
H. N. HEMPSTEAD,
ASHLEY LLOYD,
JOHN B. FOSTER,
BARNEY DREYFUSS,
CHARLES H. THOMAS.

REPRESENTING THE NATIONAL ASSOCIATION OF MINOR LEAGUES:

MESSRS. EDWARD G. BARROW and
JOHN H. FARRELL; also
MR. THOMAS CHIVINGTON, President of the American Association.

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MR. JOHN A. HEYDLER, acting as secretary of the meeting; JOHN D. CARSON, stenographer.

CHAIRMAN HERRMANN: Mr. Gilmore and Gentlemen, without going into any extensive details, I may state that a committee representing the American League and a committee representing the National League met this afternoon at an hour later than we had agreed upon, and delays were unavoidable, and we fully discussed the tentative agreement, if that is what it may be called, that was signed on last Monday night by seven Presidents of the National League, and Mr. Gilmore and Mr. Sinclair representing the Federal League.

After a full discussion of the matter, Mr. Minor, of the Washington American League Club, offered the following resolution: "That it is the sense of the National and American Leagues of Professional Baseball Clubs, in convention assembled, that the National Commission be authorized on behalf of the two leagues, to carry the agreement, as outlined and read to you by the Secretary, into effect, and that the two committees appointed respectively by the National and American Leagues be discharged."

I believe, as I understand, the American League, while all of their club owners were not here, the committee was here with power to act, and the National League was represented by its committee and all of its club owners, and this resolution was unanimously adopted.

MR. GILMORE: I can say for the Federal League that the committee represented here to-

night was appointed with full authority to discuss this proposition with you, and conclude any agreement that we might come to, and we are ready to open up the talk and see what can be done.

CHAIRMAN HERRMANN: The agreement I suppose speaks for itself. Shall we take it up paragraph by paragraph?

MR. GILMORE: I think it is best to take it up that way. There may be some other things that may come up for discussion, which probably could be settled.

MR. SINCLAIR: I suppose it is possible that we can get a copy of the proceedings here? I see that you have a shorthand reporter present here taking notes.

CHAIRMAN HERRMANN: You mean the transcript as to what may occur this evening?

MR. SINCLAIR: Yes.

CHAIRMAN HERRMANN: I do not know that there will be any objection to that, will there?

MR. JOHNSON: Absolutely none.

MR. SINCLAIR: I think we would be entitled to it, if the minutes are taken.

PRESIDENT TENER: Certainly, just as much as we are.

MR. SINCLAIR: I thank you.

CHAIRMAN HERRMANN: The Secretary—I do not know whether I am authorized to go ahead and act as Chairman of this meeting. Mr. Heydler is Secretary, but I was elected Chairman this after-

noon, as representing the committees of the two leagues, and Mr. Heydler as Secretary.

MR. GILMORE: We are perfectly satisfied to have you act as Chairman.

CHAIRMAN HERRMANN: And Mr. Heydler as Secretary?

MR. GILMORE: Yes, sir.

CHAIRMAN HERRMANN: Mr. Heydler then will proceed and read the first paragraph or section.

SECRETARY HEYDLER: (Reading): "Memorandum of agreement. December 13, 1915." I will just read the first paragraph: "First: That the National League representatives on their part agree if Mr. Sinclair or his representatives or assigns purchase the Chicago National League Club, the National League of Professional Baseball Clubs will assume fifty thousand dollars of the purchase price."

CHAIRMAN HERRMANN: This, I assume, is practically an internal affair of the National League, and speaking for the committee representing that league, I would state that that is perfectly satisfactory to us. Take up the next paragraph.

SECRETARY HEYDLER: (Reading): "Second: The National League will pay ten thousand dollars per annum for each of twenty years, if the American will pay a like amount for a like term of years to the legal representatives of R. B. Ward for lease and equipment of Federal League baseball grounds (Washington Park) the Ward heirs to pay the

rental to expiration of lease, and rent or sub-lease except for baseball purposes."

MR. GILMORE: What was your decision in reference to that lease, Mr. Herrmann? Did you want to take over the lease for the next three years, or did you want the Ward Estate to operate it? They of course understand they cannot play baseball there.

CHAIRMAN HERRMANN: That matter has not been fully discussed. That is a matter I suppose that——

PRESIDENT TENER: May I state that when that paragraph was indited, we did not have the lease there, nor did you know the exact terms of the lease. Hence, we could only refer to it and make the provision that the park should not be used for baseball purposes.

MR. GILMORE: Some of your members thought —I found out since it runs for three more years, and an option to renew for five, and then purchase at any time within the ten, so all we are liable for is three years.

MR. MINOR: What is the rental, Mr. Gilmore?

MR. GILMORE: It is twelve thousand dollars, and graduates up a thousand dollars increase each year, and the taxes are four thousand dollars. It appears to me as though it would be a good thing for you gentlemen to have in your possession, if these negotiations are concluded.

CHAIRMAN HERRMANN: As I understand it,

the Federal League agreed, if we come to some definite conclusion on this matter, they will assume this lease, if we ask them to do so?

MR. MINOR: That is the agreement.

CHAIRMAN HERRMANN: What is that?

MR. MINOR: That is the agreement, the tentative agreement.

MR. TOOLE: Mr. Chairman it occurs to me, listening to this discussion, that this is one of the detail matters that, if it is agreeable to Mr. Gilmore and his associates (so far as the National League and American League is concerned), should be referred for consideration and elaboration to the Commission. Is it necessary that these details be discussed and concluded tonight? If the general plan is agreeable, then the working out of those details can be left, as the American League and the National League have already left it to you gentlemen, in concurrence with Mr. Gilmore and his associates. It does not seem as though it were necessary for all of us here assembled to discuss the matter of these items, particularly the terms of the lease, and the question is whether you want to assume it, or they might want to assume it, and it might be discussed with more deliberation, with the papers before them. You might dispose of it in some way. I would suggest that the details of that character could be best handled through the gentlemen interested directly, and through the Commis-

sion, without all of us discussing it from all of our own respective angles.

PRESIDENT TENER: There is no question but what if this is done, we will control that park and its lease, be it for three years or whatever time you are definitely obligated to pay for it. We could then pay that rental and deduct it from the payments to the Ward heirs since the Ward heirs are obliged under the terms of this agreement to pay the rental.

MR. TOOLE: Undoubtedly, but my suggestion was—I am not attempting to understand the detail of it myself now, but merely to say that that is one of the matters which, under the resolution adopted, and in which Mr. Gilmore and Mr. Sinclair and their associates apparently concur, if these are all matters of detail, why cannot we just leave them as they are, and those gentlemen and the Commission settle them, as they now have power to do, without invoking a discussion, pro and con, on all these details.

MR. GILMORE: Read the next part.

SECRETARY HEYDLER (Reading): "Third: The National League will pay twenty-five thousand dollars to the Federal League of Pittsburgh if the American League will pay a like amount."

CHAIRMAN HERRMANN: That is agreeable to the two leagues.

MR. GILMORE: Is that agreeable to both leagues?

CHAIRMAN HERRMANN: Yes. Just a minute. Go ahead.

SECRETARY HEYDLER (Reading): "Fourth: All players now with the Federal League shall be considered eligible, the Federal League to assume all their contracts, and retain or dispose of their services in Organized Ball as the Federal League may determine, with the option that Organized Ball may assume all contracts of said players and dispose of said players as it, Organized Ball, may determine."

CHAIRMAN HERRMANN: That is perfectly agreeable to the two major leagues. Of course, in going into detail, if this proposition is adopted, in a general way, we would want to get some information as to what your contracts are, and with whom, having in mind that possibly we would want to exercise that option or not.

MR. SINCLAIR: Mr. Herrmann, pardon me, but as I understood it the other night, this was more or less a tentative agreement. We did not have to go into the details of this situation.

CHAIRMAN HERRMANN: Yes.

MR. SINCLAIR: I believe I stated at that meeting before we started, when I was called over to your office, to the Governor's office, that we were not in a position then to act for the members of our league who were not present, and this is simply a tentative agreement that we figured out over there among ourselves, without any authority to act for

the people who were not there, and it seems to me just on that particular point, that there would have to be a great many details arranged regarding the ball players. There are a great many conditions that would be necessary to be embodied in that particular paragraph. We would not be in a very safe position to accept that condition as it is there. This statement that we have here is a tentative thing, although we expected to work the details out from it.

CHAIRMAN HERRMANN: I so understand it, and I imagine that all the members of the two committees so understand it. In other words, we explained to the American League in particular that your suggestion the other day was that you turn over all these contracts if we assumed the liabilities under them, or else you will assume all of the contracts and handle the player question and the disposition of that in whatever manner you saw fit.

MR. GILMORE: Is it your idea, Mr. Herrmann, we should submit to you a complete list of our players and their salaries, and so forth?

CHAIRMAN HERRMANN: I would say this, speaking for myself only, that if we agree upon this general plan, that means we have got together on the general proposition, and I suppose then in working out the details, we would want to do that which is best for all concerned.

MR. GILMORE: I think our position in the matter would be that we have made our proposi-

tions, and that you can accept them all and take them as they are, and carry out the iron-clad ones, or leave them to us for our disposition.

CHAIRMAN HERRMANN: In other words, you would hold, then, that we should say now whether we would exercise that option or not?

MR. GILMORE: I think before any agreement is reached.

CHAIRMAN HERRMANN: That is a matter—just a moment.

(Messrs. Tener, Herrmann and Johnson confer.)

MR. GILMORE: I was under the impression that we would come over here to meet the National Commission, and they had authority to conclude arrangements, and all the negotiations, and I think we would make better progress if our committee just met the National Commission and talked this thing over.

MR. TOOLE: Mr. Chairman, let me make this one suggestion, which I have already made to Mr. Gilmore. If the Federal League, now represented by a committee with authority, will offer in this meeting a resolution similar in purport to the one offered by Mr. Minor, stating that they ratify this tentative agreement, and that the details of it will be worked out between themselves and the National Commission, then the rest of the meeting could go its way, and leave the Commission and the Federal

League committee to arrange the details. That is what I suggested to Mr. Gilmore.

MR. SINCLAIR: I will have to say, for the Federal League, that that was not the intention of that agreement, that tentative agreement. There are many other things which will have to be taken into consideration in this adjustment. We went along and got together so far as we could at this meeting, which was an informal meeting, and this is nothing more nor less than a tentative memorandum of the things we thought we might agree to do. You will find in some of those paragraphs reference to the Pittsburgh Club. The Pittsburgh Club was not represented at that meeting, and we did not take into consideration the Baltimore Club. Nothing was said about the Baltimore situation. There was nothing said in that agreement about the Newark situation. There was nothing said in the agreement about the Buffalo situation or the Kansas City situation. We simply went along there as far as we could. Now, we could not agree to abide by a pencil agreement of that kind. Our idea about the situation was that we would take this as a reference, as a memorandum, and not as an agreement. We would not stand on this agreement. As a matter of fact, we paid very little attention to the drawing of the instrument. Governor Tener, I believe, drew it, and I do not think it is hardly fair that you should ask us to come in and ratify that agreement.

MR. TOOLE: Mr. Chairman, Mr. Sinclair did not quite get my idea. I may be all wrong about it, but I am only suggesting it as a possible way to get the matter handled with expedition. The point of it is that a committee without authority from any Organized Baseball body entered into an agreement or memorandum, as you call it, on the part of the National League, and with a suggestion that the American League was to approve it. Now, Mr. Gilmore and Mr. Sinclair entered into it on the part of the Federal League.

MR. SINCLAIR: No.

MR. TOOLE: To the same extent. Now, the suggestion is, that the Federal League, having given them authority, approve of this as far as it has gone. That is the point. If they approve of it, as far as it has gone, then the National Commission and themselves can go ahead and work out the rest of the details.

MR. SINCLAIR: The majority of the members of the National League were absent at that meeting. Mr. Gilmore and myself stated we had not any authority to represent the Federal League.

MR. TOOLE: But now you have the authority, Mr. Sinclair.

MR. SINCLAIR: Now we have the authority.

MR. TOOLE: Does the Federal League ratify what you did that night so far as it goes?

MR. SINCLAIR: Not in the present shape that it is in.

CHAIRMAN HERRMANN: Well, to clear up this particular paragraph I may state that on behalf of the two major leagues, we will not exercise that option. We will leave the matter entirely to the Federal League.

MR. GILMORE: Let us hold that in abeyance, Mr. Chairman, until the Commission and our committee get together, and we can then thresh it out.

CHAIRMAN HERRMANN: What is that?

MR. GILMORE: Let that matter be in abeyance and not ratified, or anything else, and go along, and when we get to the Commission, we will go into details with them, and then we have authority to do anything that we want to do.

CHAIRMAN HERRMANN: There cannot be any objection to that proposition.

MR. DREYFUSS: What is that?

CHAIRMAN HERRMANN: I say there cannot be any objection to that proposition.

(Chairman Herrmann confers with Governor Tener.)

MR. HEMPSTEAD: Mr. Chairman, I think that if the committee from the Federal League will state that they have a right to act for their league, that you would make a great deal better progress.

MR. HERRMANN: They have so stated at this meeting.

MR. HEMPSTEAD: I know, but if that was clear, I think they would make better progress if we all leave the room and let the committees work.

CHAIRMAN HERRMANN: I understood you to say that your committee now has full power to act, Mr. Gilmore?

MR. GILMORE: We do now have full authority to act, and I think Mr. Hempstead's suggestion is a good one.

MR. SINCLAIR: You remember, Mr. Hempstead, we told you at this meeting we did not have authority to act for our league. We told you individually we had authority but collectively we did not. We had not taken this agreement up before our committee of the Federal League.

MR. HEMPSTEAD: Mr. Sinclair, you are using that exactly as we are, as a basis on which to start.

MR. SINCLAIR: We are very glad to do it, and I think perhaps we can get along and get together on all the points of the agreement, but to use that as the agreement, we would not consider it at all.

MR. HEMPSTEAD: We understand there are other things besides that, and I think if the committee gets together, we will obviate all interjections, as I interjected just now, and somebody else a few minutes later, and you will make better progress than you can with this large body.

CHAIRMAN HERRMANN: I understand, Mr. Gilmore, you state now that you have authority to act on behalf of the Federal League; that is, your committee?

MR. GILMORE: We have full authority, Mr. Herrmann.

PRESIDENT TENER: I will admit I am surprised to hear Mr. Sinclair say tonight that we should have understood that he and Mr. Gilmore did not have any authority to act for the Federal League. If I am not mistaken, all of our people felt that they had, at our meeting at the Republican Club, and while this agreement is a brief one, it sets out in many of its provisions and paragraphs what the Federal League shall do and what the Natonal League will do, all of which was contingent on whether or not it would be acceptable to the American League, and as I say, I am surprised that we come now at this late date to find that the Federal League representatives were not acting or assuming full authority in the matter. I am sure we would not have referred it at all to the American League had we not had that impression from our last meeting with the Federal League.

MR. SINCLAIR: I do not recall whether you were at the meeting all the time, Governor, but I believe that your associates will remember very distinctly when I first came into the meeting that I told them that some time last summer, at some previous meetings we had, I had full authority to act. I believe they will also remember and agree that I told them that I did not have authority to act at this time, full authority to act for the league. I just do not recall whether you were in the room all the time or not.

PRESIDENT TENER: No, I must have been out of the room, Mr. Sinclair, because I did not hear that statement.

MR. GAFFNEY: Mr. Sinclair said that in your office, Governor. When he first came in he said that, but around at the Republican Club he said that everything—he said they had power to act on everything there, and you will bear in mind when we talked about the Ward proposition, he said, "Do not let us change that at all; anything else we talk about, but we must not change the Ward proposition, because I have to go back to the Ward estate. I have to go and deal with the widow and executors and I cannot deal with them, but the rest is all O. K."

MR. SINCLAIR: I still have authority to go ahead with the Ward condition there, just as we have it.

MR. HEMPSTEAD: Mr. Sinclair, is there anything in that tentative agreement which you do not now agree to?

MR. SINCLAIR: I would want to take it up with the committee first, who have the authority. There is nothing there which I object to, but I would suggest that we make the agreement in more detail.

MR. HEMPSTEAD: Just on those points.

MR. SINCLAIR: In many instances—we could not, under that agreement there, accept the liabilities of the ball clubs unless we were able to do

something with the ball players, and those things all must be taken into consideration.

MR. HEMPSTEAD: In other words, there are other things besides that particular agreement, but if the other things are satisfactory, are you still satisfied with your memorandum there?

MR. SINCLAIR: I think the substance of it, yes.

MR. HEMPSTEAD: There is no question then, so far as they go, and I am speaking of just as far as they go, you are satisfied?

MR. SINCLAIR: As far as a portion of them go, I am satisfied. I was not in a position to speak for Pittsburgh at that time, but we have authority now to speak for them.

MR. HEMPSTEAD: We are sort of wasting time here, because, if you are satisfied so far as they go, the question does not arise about the Baltimore Club yet.

MR. GILMORE: Mr. Chairman, the meat of that tentative agreement is all right, as far as we are all concerned, except that we want it put in proper form. I do not think there is any change at all in our attitude, and I have taken it up with the Pittsburgh people, and we have authority to represent them, and I think the substance and meat of the agreement is O. K., but it has got to be put in proper form, and there have got to be other things looked after. We could not take one hundred ball players unless we have a couple of

ball clubs to put them in. Those are matters that are tentative in this.

MR. HEMPSTEAD: I understand that, but there is no change in your mind so far as that goes?

MR. GILMORE: On the meat of the agreement, no.

MR. HEMPSTEAD: Then we are wasting time.

MR. TOOLE: That gets back to the proposition I stated. These gentlemen have entered into an agreement, which they now say they did not have full authority to consummate, or a memorandum. Now, they say, they have that authority and the memorandum as made meets with their present full approval. It seems to me the only thing necessary for them to say in order to release the rest of us from any connection with it is, so far as that goes as a protocol or basis or memorandum of further negotiations and agreements, that is O. K., and then we go on from that.

MR. SINCLAIR: No, we would not say so. No, we would not agree to that at all.

COL. RUPPERT: Mr. Chairman, do I understand that the Federal League objects to these agreements that were made here a week ago with the National League.

MR. SINCLAIR: We do not.

COL. RUPPERT: Do you object to any part of it?

MR. SINCLAIR: We do not.

COL. RUPPERT: I understand that Mr. Sinclair

and Mr. Gilmore signed this agreement. Now, if we are going to wrangle about these things, I would suggest this: Let the Federal League draw up their conditions, what they want, and then submit them to us, but we are wrangling over something here which they concede.

MR. COMISKEY: And that is what we came from Chicago on? It was agreed to the other day but——

COL. RUPPERT: They say now they are authorized, now, for their league, and they were not authorized to act for their league the other day, but they are now authorized to act for their league. If that is the case, why not let the committee, who are authorized now to act for their league, draw up their agreements, and then submit them to us, but I understand they were not——

MR. GILMORE: As I stated a few minutes ago, and made a suggestion, I believe if the National Commission would meet us in a body, there would be no trouble in going along and threshing out this matter, but with thirty or forty gentlemen in the room, lawyers and otherwise, I do not believe much will be accomplished.

COL. RUPPERT: Mr. Gilmore, are you willing now to put through these agreements or this agreement that you signed?

MR. GILMORE: Mr. Ruppert, I said a few minutes ago the meat of that agreement is O. K.

COL. RUPPERT: Will you act now on that agreement?

MR. GILMORE: As it is written?

COL. RUPPERT: Yes.

MR. GILMORE: No, but so far as the substance, the meat of it is concerned, we are prepared to act. I do not know whether the wording of that agreement is right or not.

MR. COMISKEY: You do not know anything about the wording of an agreement you have signed?

MR. GILMORE: I know about the wording of it, but I prefer to show it to a lawyer. You have your lawyer here, Mr. Comiskey.

MR. COMISKEY: We do not want any lawyers. We want your word, and we will give you our word, and that is the way we want to go along. That is the way baseball has been conducted in the past.

MR. GILMORE: And that is the way we want to do business, Mr. Comiskey, and I have endeavored to tell you we are prepared to go along and make that agreement.

(The committee of the Federal League conferred together.)

MR. GILMORE: Mr. Chairman may I say a few words? I want to say, as the basis of negotiations, that agreement is all right with us. Now, what more can I say?

MR. HERRMANN: He says as a basis that agree-

ment is all right with them, and they have power to act. I understand, Mr. Gilmore, you want to meet the Commission and work out the details?

MR. GILMORE: That is what we want to do, and that, as a basis of negotiations, is all right, for our committee.

MR. MCKEEVER: Mr. Chairman, we have appointed a committee, and the Federal League has appointed a committee to work this thing out. Why not let the committee meet together here, and all the rest leave the room, who are not on the committee?

COL. RUPPERT: Mr. Chairman, do you think a committee can be discharged without the consent of their organization? We are here representing the American League. Now, can we be discharged by our own vote or must we be discharged by the vote of the American League?

MR. LANNIN: We came here on the strength of that agreement. That is what we came here on.

MR. MINOR: I offered that resolution upon the theory that this was a contract already reached by the Federal and National Leagues.

MR. COMISKEY: Absolutely.

MR. MINOR: And waited the consent and approval of the American League. The American League has gone on record as assenting to the terms of this, and appointed a committee to come here on its behalf. This is what we had before

us. This is what we acted upon. This is what this committee has been appointed to carry into effect. We say that this agreement, as embodied here—call it a tentative agreement if you will, but it is over the signature of the National League, and over the signature of its president, and Mr. Sinclair of the Federal League, and as such we expected and had a right to believe that this was the agreement, a tentative agreement it is true, but an agreement reached by you gentlemen, and upon which we should act. Now, if this agreement is not satisfactory to the Federal League, we have said to you gentlemen of the National Commission we leave our powers with you, we delegate them to you; we do delegate them to you on the theory that this is the agreement which is going to be carried into effect, but if this is not, we have no authority to delegate our authority, and I shall have to ask for a resoluton withdrawing it on the discharge of the committee, because I do not feel that a committee, acting on behalf of the American League, has a right to ——

MR. HEMPSTEAD: The same thing is true of the National League, so far as that goes.

MR. MINOR: That is true. I withdraw as to both, Mr. Hempstead, I do. I withdraw as to both. I was acting in concert with you, gentlemen, acting on the theory that this was an arrangement which had been reached.

MR. HEMPSTEAD: I think, Mr. Minor, as a

matter of fact it is something which has been reached in an agreement, and I do not believe there is any difference between those gentlemen and ourselves except in the way of expressing their thoughts. They merely maintain that that is the way it is worded—that it is not sufficient, and there are other things which would come up in discussion, in addition.

MR. COMISKEY: Who worded it?

MR. HEMPSTEAD: Well, Governor Tener worded it. It was merely an expression to show the main points upon which——

MR. COMISKEY: The League worded it, too. The signatures are there.

MR. HEMPSTEAD: That is all very true, but it was only meant as the basis of the main items. The Federal League come in and say there are other items, and to take that as all the agreement, and in its entirety, is unsatisfactory, and I will say that it would be to me. As a member of the National League, it would be unsatisfactory to me to put that into effect, as it is there. You could only work on that as a basis to start a future contract, which I thought the National Commission had the authority to fix, and I still think the National Commission could act for us tonight, reporting it, if necessary, back to the American League committee, and to the National League committee of four each, as I understand it, and we could settle it in that way. We will never get

ahead with twenty or thirty or forty men in the room. Three men can do three times the work of forty of us on a thing of that character.

MR. LANNIN: I grant you that, and agree with you fully. I concede there are a lot of details that have to be worked out in connection with it, but the details of the work upon that plan, which has been adopted, we say we are satisfied with it. Do the gentlemen from the Federal League say so?

MR. HEMPSTEAD: Yes.

MR. LANNIN: If they go on record in the same way, then we appoint our committee, but until that is done——

MR. EBBETS: Mr. Chairman, I hardly believe that the members of the Federal League here present will object to meeting a committee of the American League and a committee of the National League, and I speak I believe, for those in the room who are not members of the committees of either league, that we will withdraw and leave it to an equal number of each league to thresh this thing out, if the Federal League so desires. We, of both leagues here present, have no voice in any discussion that may come up. That is left to the committee of each league, but if you gentlemen wish, and I speak, I think, for everyone in the room who is not a member of either the American or the National Leagues committees, we will with-

draw, and that will simplify matters. I am ready to go out now.

MR. GILMORE: That is perfectly agreeable to us, to meet two committees of the two leagues.

MR. JOHNSON: Gentlemen, there is absolutely no reason for you leaving the room. I wish you would all be seated. There is no reason for you leaving the room at all. Sit down, gentlemen. Mr. Toole has made a proposition, and we will see if his suggestion meets with the approval of the Federal League.

CHAIRMAN HERRMANN: What is your proposition or suggestion Mr. Toole?

MR. TOOLE: My suggestion is that the matter having been by the joint action of the National and American Leagues delegated, on the basis of this memorandum or protocol, or whatever you may call it as the basis for further negotiation and further elaboration, that having been delegated by the two committees of the two leagues to the National Commission, I ask that the Federal League committee here present, with authority to act, will now say, "We also, with that as a basis of negotiation and elaboration, are willing to take it up with the National Commission, and work it through to a working agreement.

MR. GILMORE: We have already agreed to that.

MR. TOOLE: That is all there is to it, I think.

COL. RUPPERT: Mr. Toole, have we a right to discharge ourselves as a committee?

MR. TOOLE: Yes, undoubtedly you have.

COL. RUPPERT: When we are delegated by our own associates to act as a committee?

MR. TOOLE: You have taken the place, by being delegated with power to act, you have taken the place of your league. You have the same right to act in the matter as your league has.

COL. RUPPERT: We can have a sub-committee appointed, but we cannot discharge ourselves without reporting back to the league, can we?

MR. TOOLE: You can delegate your authority to the National Commission. As a matter of technical effect, whether you remain alive as a committee is unimportant.

MR. MINOR: May I interrupt you please, Mr. Toole?

MR. TOOLE: Certainly.

MR. MINOR: We are delegated as a committee to act upon that agreement, as a basis of settlement. That agreement is acceptable to the American League. It is acceptable to the National League. It is acceptable now to the Federal League. As such, we are acting upon our instructions. We delegate the details of it to be worked out by the National Commission.

COL. RUPPERT: As a sub-committee, we can do that?

MR. MINOR: I think so. That would be my opinion. Don't you agree with me, there, Mr. Toole?

MR. TOOLE: Yes, I think so.

COL. RUPPERT: But you cannot discharge the committee.

MR. MINOR: We do not discharge ourselves until that is accepted.

COL. RUPPERT: The motion was, that we discharge ourselves and leave it to the Commission. We cannot discharge ourselves. The only ones that can discharge our committee is our organization. We can appoint a sub-committee.

MR. TOOLE: That is true. You may have to report back and get a decision from your organization, but the delegation of your authority is a different thing.

COL. RUPPERT: This is a very important and serious matter. I should judge this is a matter we all want to be satisfied in. Now, no doubt, if we all sat in this room, it probably might take longer to discuss this very important matter, but I think it is worth our while to sit here and thresh this thing out, and then every member in this room will be satisfied that what we are doing is right. That is what I feel about this proposition. There is no reason why anybody should go out of this room at all. It is one family. Now, let us try to agree on something, and no one can go out of this room and say, "Well, the committee did so and so, and I oppose its action," so I am very much in favor, gentlemen, that we should remain here as we are.

MR. GILMORE: Mr. Chairman, you know our attitude in reference to that. I have told it to you two or three times. As a basis of negotiation, it is O. K.

CHAIRMAN HERRMANN: Then we will go ahead and proceed, and discuss it in detail.

MR. GILMORE: Yes, sir.

CHAIRMAN HERRMANN: As I understand, the first paragraph is perfectly agreeable to everybody.

MR. SINCLAIR: We want to ask permission of this meeting to call in our attorney. I see you have an attorney here. We will have to ask for protection ourselves. I suppose that is all right.

CHAIRMAN HERRMANN: They ask that they be permitted to call in their attorney. There is no objection to that. That is absolutely fair. There is no objection to it.

MR. SINCLAIR: I also——

CHAIRMAN HERRMANN (Continuing): I have also this to say. I will also state if you have any other members of the Federal League here, there is no objection to them coming in.

MR. GILMORE: I was going to ask permission for that also.

COL. RUPPERT: If we are to get together, let us get together.

CHAIRMAN HERRMANN: Call in your attorney, and if there are other members of the Federal

League here in New York, we are glad to have them here also.

MR. SINCLAIR: We do not want this to go along as a cut and dried proposition without any consultation about these things. I am not in a position to say whether that agreement there is in proper form or not. You gentlemen have gone over it, and your attorneys have gone over it, and we have not. We thought it would be used as the basis for an agreement, and we still agree with that.

CHAIRMAN HERRMANN: Our attorneys have not gone over it except in a general way. We realize if we are going to agree at all, we have to have a different kind of an agreement drawn up than that way, although embodying those issues in a general way.

MR. MINOR: Those are the essential features we are dealing with. There happen to be one or two members of the American League who are lawyers, but there has been no lawyer, as such, called into the American League. We discussed it as an American League body.

MR. TOOLE: That is the same condition in the National League.

MR. MINOR: We had no outside lawyer or anything of that sort.

MR. SINCLAIR: We have some lawyers interested in our league, and we will have them come over to satisfy us.

MR. HERRMANN: No objection to that. Can you get them now?

MR. SINCLAIR: Yes, I have just sent for them.

CHAIRMAN HERRMANN: While we are waiting, shall we go ahead with the other paragraphs? I think it would expedite matters.

MR. SINCLAIR: Well, we would not be able to ratify them, but we can go over them.

CHAIRMAN HERRMANN: Discuss them just in a general way. What is the next paragraph?

MR. SINCLAIR: With reference to the ball players, I would like to have some information as to the rules of the National League and also of the American League. I understand there is a player limit now at this time in the National League, and, if you remember, we discussed that particular point very fully the other night. We thought it was necessary to modify that ruling for a reasonable length of time, so we would have an opportunity to do something with our assets.

CHAIRMAN HERRMANN: Just a moment. Don't you want those gentlemen to remain here?

PRESIDENT TENER: You cannot make them remain if they do not desire to remain.

CHAIRMAN HERRMANN: I thought somebody asked them to step out.

PRESIDENT TENER: Oh, no, they went out of their own accord.

CHAIRMAN HERRMANN: Go ahead, Mr. Sinclair.

MR. SINCLAIR: That was one point I wanted to raise, regarding the player feature of the agreement.

PRESIDENT TENER: It now reads: "All players now with the Federal League shall be considered eligible." "Eligible" means that they will be placed in good standing, without discrimination.

MR. SINCLAIR: And be the property of the present owners?

PRESIDENT TENER: Of the Federal League, yes, they to assume their contracts, and if the Federal League owners acquire a club or two, they can place as many of those Federal League players in that club as they please, and dispose of the others whenever and wherever and for what price and to what club they please.

MR. SINCLAIR: Then that understanding is all right. That means there is no limit in the number of players that we might carry for a limited length of time.

COL. RUPPERT: I understand it is now limited in our league to twenty-five. I do not see how we can let any club go over that limit, unless we all have that same right.

MR. SINCLAIR: I should think everybody would have the same right, Colonel. It is placing us in rather an embarrassing position, if on a certain date we have fifty players or forty, and on a certain date we must eliminate fifteen of those players.

COL. RUPPERT: You mean a limit of time for eliminating them?

MR. SINCLAIR: Yes, sir, I think we ought to have a reasonable time to dispose of them.

PRESIDENT TENER: Certainly.

CHAIRMAN HERRMANN: That has always been done.

MR. SINCLAIR: I think your rule on that particular point ought to be modified so that we will have a limited time to dispose of those players.

MR. MINOR: How long a time would you want to do that, Mr. Sinclair?

MR. SINCLAIR: I would think that the season of 1916 would be all right. It would take a year.

MR. HEMPSTEAD: If they were not permitted to play any more of those players than a certain number, like we do with a sick player or ineligible player, or someone disqualified temporarily—because we can only play twenty-one men, and they can have fifty on the pay roll, if they do not play them. If they get rid of one, they are playing under the twenty-one. Couldn't they take one out of that for the season, under our present Playing Rules?

CHAIRMAN HERRMANN: As I catch Mr. Sinclair's thought, it is this: They want to have an opportunity to dispose of surplus players that they believe, at this time, are an asset to the Federal League.

MR. SINCLAIR: We feel so, yes.

MR. MINOR: For one season?

MR. SINCLAIR: Yes, that is ample time. We ought to be able to get rid of them in a year. Many of those contracts are contracts perhaps the same as you have, and it is necessary for us to pay them during the season. I am not familiar with the laws of the National Commission on those points. I am not familiar with your individual league laws on those particular points.

SECRETARY HEYDLER: On May 1st we cut to twenty-one men.

CHAIRMAN HERRMANN: There will be no objection to that.

MR. SINCLAIR: We want you to modify the rule and give everybody else the same advantage during that time.

CHAIRMAN HERRMANN: We do not want to do that. We will give you an opportunity to get rid of your surplus players, although so far as the Cincinnati Club is concerned, we do not want to go up again. We would rather keep down to twenty-one, for economic reasons.

MR. COMISKEY: You get his thought, Mr. Herrmann?

CHAIRMAN HERRMANN: Yes; his thought is, that they want to be given an opportunity to dispose of their surplus players.

MR. COMISKEY: Then give them the opportunity.

CHAIRMAN HERRMANN: That is all right.

PRESIDENT TENER: Agree here that these surplus players shall be considered eligible, and that the Federal League will assume all their contracts and reserve—I mean, assume their contracts and retain or dispose of the services of those players. You cannot make an agreement of that kind unless they have an opportunity, and may retain those players or may dispose of them. That certainly was the understanding at the time when they agreed to take over and assume all the contracts of their players.

COL. RUPPERT: Mr. Sinclair, do I understand that you want to dispose of them in a certain length of time, the playing season of 1916, say; is that it?

MR. SINCLAIR: I think our contracts—when do they expire, Mr. Gilmore?

MR. GILMORE: The season of 1916, Mr. Chairman.

COL. RUPPERT: Will that be ample time?

MR. SINCLAIR: Up to the season of 1917, let us say. I think the contracts expire about that time.

MR. MINOR: Then there is an alternative option that organized ball, if it sees fit, can take over the players themselves, and assume their contracts.

PRESIDENT TENER: Make it one year from date.

MR. GILMORE: I think it should be one year

from the opening of the season. Why don't you make it one year from the time they go to the training camp? Give us from the time they go to the training camp in 1917.

MR. SINCLAIR: The opening of the season.

CHAIRMAN HERRMANN: That is agreeable.

MR. SINCLAIR: That will give us a chance to work that out.

PRESIDENT TENER: Now, we do not exercise our option. Now Mr. Secretary, Number 5.

MR. GILMORE: Have we acted on the other part of it, the length of time we will have for it?

CHAIRMAN HERRMANN: Yes, that is perfectly agreeable.

MR. WEEGHMAN: The opening of the season of 1917.

PRESIDENT TENER: Mr. Gilmore, he suggests when you go to the training camp. That is the first of March. Do you want to amend that?

MR. WEEGHMAN: I think so; the opening of the season.

PRESIDENT TENER: Mr. Weeghman suggests the opening of the season, and there is no objection.

MR. WEEGHMAN: 1917.

MR. DREYFUSS: You will make a mistake if you do that. You will have to sign new contracts with them and will be liable for another year.

CHAIRMAN HERRMANN: If we get together, I imagine we will go over those details.

MR. WEEGHMAN: I see the point, and the point is a good one.

COL. RUPPERT: Do I understand they must be down to the player limit after the first day of April, 1917?

MR. SINCLAIR: Is that the date of the opening of the playing season?

MR. JOHNSON: The beginning of the playing season of 1917.

COL. RUPPERT: That fixes it.

MR. SINCLAIR: Whatever that date might be fixed by your league.

PRESIDENT TENER: We all agree upon the same date, "On or before the opening day of the playing season of 1917."

MR. SINCLAIR: Of the National and American Leagues.

PRESIDENT TENER: Yes.

CHAIRMAN HERRMANN: What is the next paragraph?

SECRETARY HEYDLER (Reading): Paragraph 5: "The above terms of agreement are only intended to state in a general and brief way an understanding between parties hereto, and to constitute the basis of a final agreement to be entered into by and satisfactory to the American League of Professional Baseball Clubs and others of interest."

MR. MINOR: That has been discussed. Now, the next proposition?

MR. SINCLAIR: That answers all the discussion we had in the early part of the meeting, that paragraph there.

CHAIRMAN HERRMANN: Other interests. Of course, you understand by that we mean the National Association and its constituent leagues.

MR. SINCLAIR: And our other interests also, Mr. Herrman.

CHAIRMAN HERRMANN: I am referring particularly to organized baseball, because if we are going to get together in this way, we might be able to help along.

PRESIDENT TENER: It could not be construed in the way that Mr. Sinclair suggests. That paragraph could not, in my opinion, be construed as Mr. Sinclair suggested, that "others of interest." It means the American League and the minor leagues, and things of that kind, because we do not mean the National League. We say the American League and others of interest. If we intended it for all of them, we would say, "The Federal League, the National League, the American League, and others of interest."

CHAIRMAN HERRMANN: We refer to the National League and the Federal League, in the opening paragraph, as being at "a casual meeting."

PRESIDENT TENER: Not in that way.

CHAIRMAN HERRMANN: Your introduction, your preamble, so speaks, because we could not in-

corporate anything at that time, on last Monday night, if it was the American League and the National Association, because we were not authorized to make even a tentative agreement except in so far as the National League was concerned from an individual standpoint.

PRESIDENT TENER: This paragraph stands alone, I would say, and is susceptible to that construction: "The above terms of agreement are only intended to state in a general and brief way an understanding between parties hereto, and to constitute the basis of a final agreement to be entered into by and satisfactory to the American League of Professional Baseball Clubs and others of interest." That agreement is between the National and the Federal.

MR. SINCLAIR: Governor, why take that position in the matter? The American League is not inserted in this thing, is it? Where is that clause?

SECRETARY HEYDLER: Here is the paragraph.

MR. SINCLAIR: We were certainly interested in this, and we should have the same privilege that you gentlemen have to arrive at a satisfactory conclusion of all the items or matters that might come up.

PRESIDENT TENER: It is satisfactory to the National League, and we are a party to that agreement. Now, read the last paragraph.

SECRETARY HEYDLER (reading): "It is further

understood that this agreement shall not be in effect until the suit between the Federal League versus the National League, et al., before Judge Landis of Chicago, shall be withdrawn with permission of the Court." That is the final paragraph.

MR. GILMORE: We will have to wait until our attorney comes, Mr. Chairman, before we decide upon that question.

(At 10.20 P. M., Mr. Stewart S. Janney, attorney of the Federal League, entered the room, and the following proceedings took place):

CHAIRMAN HERRMANN: Mr. Sinclair has informed me there is a representative from the Baltimore Federal League Club that would like to be heard.

MR. STEWART S. JANNEY: We feel just as I suppose everyone feels, that peace is the very best proposition in baseball and for baseball. We are all willing to concede that, and we hope it will come about. There is in the proposal which has been adopted, and which has been signed by certain parties—the situation in Baltimore is not touched upon, and it seems to me important in several aspects. In the first place, Baltimore has a population of seven hundred and fifty or eight hundred thousand people, including the suburbs, which are not included however in the city limits, and therefore do not appear in the census.

We are willing to purchase and pay for a

franchise in the major leagues, if we can get it, and we want that to be the main keynote of our situation this evening. It is really the starting point of our whole experience in baseball. It is that here is a town where the people are devoted to baseball, and they will patronize it.

In addition to that, in a city of that size, if there is going to be peace, it ought to be a permanent peace, and if it is to be a permanent peace you do not want to leave open a community of that size and representative proportionate to its population and importance in the league.

We are not venturing to suggest to you gentlemen just what franchise we think that would be. You could work that out probably better than ourselves, but that is our starting point, and that is what we would like to see, and which we lay before you.

Baltimore is not mentioned in the proposals that you have heretofore considered, and we think that that is—we want that to be taken up with every consideration, and if the answer is this, if you state or suggest that Baltimore would not pay the rest of the teams what the city does from which the franchise might be moved, we would be willing, and we will say that it will guarantee to pay as much as the city from which it is moved. In other words, the patronage there, we are willing to stand back of. We know it is there. We know that the people attend the games, and we

know we can produce the same revenue for a visiting team that has been produced by the city from which it will be moved. Now we would like to have you consider this.

We have several times brought forward this thing in a tentative way before the organization of the Federal League, Baltimore has, but it has never received a real hearing because everything was not settled, but in making a general peace, a general settlement, it seems to me most ill-advised that that large community should be overlooked. The only objection heretofore made is because it is not in the West, or it is in the East, and there are already four cities in the East which are larger, which have franchises, but when you consider it takes eight cities to make a league, and it is not necessary that four be strictly in the East or four in the West, it can be grouped with the Western cities, and it is a night's jump from there to any Western city. Chicago, for instance, we can leave at six o'clock in the evening and be there in time to play the next day, so there is no actual objection there; there is no objection on that score. That the attendance would not be such as to justify this, we will cover that by suitable guarantees, but given the principle that Baltimore shall be admitted into a major league franchise, then there won't be any difficulty about arranging the details. We are here to do that.

We represent a large body of representative

citizens there, and we will see to it that suitable guarantees are given to back up every word that I have said. That is our position, gentlemen, and we do not ask anything; we do not ask anything if we could be given the privilege of buying and locating a major league club in Baltimore, at a reasonable business price, a franchise in this league, in either one or the other of the two major leagues which you represent. We do not ask anybody to sacrifice anything or contribute to us. We are willing to stand in our own position and come forward and back our words with deeds and give you suitable guarantees. Does that fairly set forth the position which we have? (Addressing Mr. Gilmore and Mr. Sinclair.) If there is anything else which I may have overlooked, remind me of it.

CHAIRMAN HERRMANN: Of course, you realize that in so far as the National League is concerned, its circuit is fixed by its constitution and cannot be changed without unanimous consent.

MR. JANNEY: I appreciate that.

CHAIRMAN HERRMANN: And assuming now, for the moment, that the league would consent to a change of circuit, then you would have to make an arrangement with some club in that league to get their property, their franchise, so to speak.

MR. JANNEY: Yes.

CHAIRMAN HERRMANN: If that consent could not be obtained, if the league did not give unan-

imous consent, or you could not make an arrangement with the National League Club, that would end that proposition at once.

MR. JANNEY: That would end that, I understand. I think though if you start off with a proposition as to whether or not the National League would consent to a transfer of one of its franchises, I hesitate to suggest or name one, because I do not know the feeling very well of those who may be interested in the particular franchise I might mention, but if you would consent to the transfer of one franchise to Baltimore, and, of course, probably you would have to know exactly what franchise you were dealing with before you could intelligently give your consent, therefore I would suggest we could conclude what arrangement we had in mind. Shall I mention the particular franchise?

MR. GILMORE: No.

MR. JANNEY: I do not want to make any suggestion that might be tramping on or might affect anyone who might be interested in the particular franchise in question, but that seems to be the situation. We understand that one can be bought, and if that could be done, and consent be given to the transfer of that franchise to Baltimore, then our problem is solved, and the city in question would not be without baseball either. Both gaps could be filled instead of one of them being empty and without suitable representation.

CHAIRMAN HERRMANN: I do not know what franchise of the National League you refer to, but speaking now not as a member of this committee or of the National Commission or as Chairman of this meeting, I will say right now, in so far as the National League is concerned, the Cincinnati Club would not vote for a change of its circuit at this time, and unless they did, it could not be put into effect, that proposition. There are other National League Presidents here, and they may be heard on that.

MR. JOHNSON: Do you think, Mr. Herrmann, that they had the Cincinnati franchise in mind.

CHAIRMAN HERRMANN: I do not believe he has. If he has, he has not discussed it with me.

MR. EBBETS: What National League franchise has he in mind?

CHAIRMAN HERRMANN: I do not know.

MR. JANNEY: Gentlemen, I imagine that that would be a matter—of course, you know our position is that what we want is a franchise. Really, the question of what franchise, I should suppose that would be a question of negotiations with the individuals who owned that franchise, but if we could get your permission to negotiate, I would be glad to say privately to the Commission, and talk it over with them, but I hesitate in a company such as this to make the statement as to what franchise I have in mind.

CHAIRMAN HERRMANN: Well there are other National League Presidents here.

MR. GAFFNEY: I move that the Chairman call the roll of the National League and find out which franchises are for sale. (Laughter.)

CHAIRMAN HERRMANN: Probably all the clubs are not all represented here. I think the most important thing right now, Mr. Gaffney, while we are in this room—would you vote to change the circuit, regardless of what franchise?

MR. GAFFNEY: Not to Baltimore, absolutely no.

CHAIRMAN HERRMANN: Is Mr. Hempstead in the room?

MR. LLOYD: No he is out.

CHAIRMAN HERRMANN: Mr. Lloyd?

MR. LLOYD: I think I share Mr. Hempstead's feeling in saying there is no hope for it.

CHAIRMAN HERRMANN: Mr. Ebbets.

MR. EBBETS: Unequivocally, no.

CHAIRMAN HERRMANN: Mr. Baker is not here.

MR. GAFFNEY: I have a proxy for Mr. Baker and I say no.

CHAIRMAN HERRMANN: Mr. Johnson can speak for his league.

MR. JANNEY: I should hardly suppose it is necessary, after so many have said no, and it takes unanimous consent, and it is all "noes." It seems to be a unanimous refusal.

PRESIDENT TENER: Only the National League have spoken.

MR. HERRMANN: The American League may be willing, I do not know.

PRESIDENT TENER: Here is Mr. Comiskey.

MR. COMISKEY: What will you give for a franchise?

MR. JANNEY: It depends somewhat on the one.

MR. COMISKEY: I will sell you a good one. (Laughter.)

MR. JANNEY: I will deal with you.

MR. COMISKEY: All right, what would you give for it?

MR. EBBETS: Comiskey is a business man all right. (Laughter.)

MR. JANNEY: I think that is a subject we ought to discuss at some length and in some detail.

MR. COMISKEY: What do you think the "White Sox" are worth?

MR. GILMORE: I think they are worth about $600,000.

MR. JANNEY: I will take it.

MR. COMISKEY: You will not. We are going to leave the concrete there. Baltimore does not want a major league franchise.

MR. JANNEY: What do they want, Mr. Comiskey?

MR. COMISKEY: They want a lot of "guts" to protect the minor league clubs, that is all. That is just what they want, a lot of "guts" to protect

the minor league clubs. They have to prove they are a minor league city yet.

MR. JANEY: No, and that is just the reason, that they are not, and I would like to ask you whether if you put a minor league in Chicago, you would get two hundred people out to see the games.

MR. COMISKEY: Yes, we tried it out, and we tried it in your town at the same time.

MR. JANNEY: What is that?

MR. COMISKEY: We tried it in your town at the same time, and I am awfully glad I met you before you bought the franchise. Don't buy any major league franchise for Baltimore, and don't pay a hell of a price for a minor league franchise. (Laughter.)

MR. JANNEY: That is true, there is a big difference.

MR. COMISKEY: There is not a big difference, there is not a big difference at all.

MR. JANNEY: If you put a minor league in a major league town, it don't pay.

MR. COMISKEY: Well, what would you give for a franchise in Baltimore? Suppose we could blow life into McGraw, Kelly and Jennings and all those players that you had there that you could not support.

MR. EBBETS: Put this money on the other——

MR. COMISKEY: Put them back there. What would you give for those players if we would guarantee that they would play good ball in Bal-

timore for ten years, what would you pay for them and how loyally would you support them?

MR. JANNEY: We would support them well.

MR. COMISKEY: What crowd would you draw?

MR. JANNEY: We would draw sufficient to enable us to pay $250,000 for a franchise.

MR. COMISKEY: That is just the proper price for a minor league franchise. (Laughter.)

MR. JANNEY: Mr. Comiskey, in Chicago, with the standing that your club has there, I will say that your franchise is worth more than that.

MR. COMISKEY: Now, just a moment. I am telling you what you would give, if you had a guarantee that they would play. That is a supposition, I am saying that, but we did that, we did that, and how many people do you imagine you would play to in Baltimore?

MR. JANNEY: We would play to sufficient——

MR. COMISKEY: Yes, but just give a rough guess. This is an argument. Would you play to a hundred thousand?

MR. JANNEY: Yes, we would play to over two hundred thousand.

MR. COMISKEY: Well, you had that condition and you played to ninety-six thousand.

MR. JANNEY: I know that, I know that too, but you know the circumstances that were there at that time, and baseball is very different today than it was then.

MR. COMISKEY: No, no, the conditions are just the same.

MR. JANNEY: I think you will find during the Federal League season, even though playing at the tail-end, we played to more of a crowd than in a number of cities.

MR. COMISKEY: You had Jennings, you had McGraw, you had Kelly, and you had all those men, and you had a franchise in the American League (?) and you had the big town to draw from, and you played to ninety-six thousand people! Now, don't buy any major league franchise.

MR. JANNEY: We played to a great deal more than that.

MR. COMISKEY: You played to ninety-six thousand people, and you can get the facts, because the same people are in control now, in the Federal League.

MR. JANNEY: Now, "money talks" in a situation of that sort, and as I say, we are prepared to back up with proper guarantees as to the number of people it will draw, and the revenue it will pay. Or course, we cannot guarantee the people.

MR. COMISKEY: Of course you can't guarantee the people; the people would not come out.

MR. JANNEY: We would not be putting ourselves behind it if we did not know that we could do it. What is your theory about Baltimore? What do you want to do?

MR. COMISKEY: Baltimore, a minor league city, and not a hell of a good one at that.

MR. EBBETS: That's right.

MR. COMISKEY: As sure as you are sitting there now, and your friends will tell you. Charlie, show them what you have got in Baltimore. You are the best evidence in the world. Tell them what you drew in Baltimore. What is the good of getting up here and talking about buying a major league club for Baltimore? A major league club, to start off with, without anything, is worth $600,000 or $700,000. You have not the slightest idea of paying $600,000 or $700,000, have you?

MR. RASIN: There are some in the two leagues that can be bought for less than that.

MR. JANNEY: There are plenty of them that can be bought for less than that.

MR. EBBETS: Ed. Hanlon was, when he came to Brooklyn, from the Baltimore Club.

MR. JANNEY: He is right down here somewhere; I will have him up here.

MR. EBBETS: When he quit Baltimore and came to Brooklyn, he said, "Baltimore is not a major league city." We lost money in Baltimore operating the club with the same players that Mr. Comiskey speaks of.

MR. JANNEY: There are very peculiar circumstances that brought that about.

MR. EBBETS: Nothing peculiar about it; it is

a minor league city, positively and absolutely, and will never be anything else.

MR. JANNEY: That is your opinion.

MR. EBBETS: Sure that is my opinion, because I had a piece of experience and lost money down there.

MR. JANNEY: But money has been lost in other towns also in baseball.

MR. EBBETS: Not in major league cities.

MR. JANNEY: Yes, they have been lost in other towns that are major league cities.

MR. EBBETS: It is one of the worst minor league towns in this country.

MR. JANNEY: It will never be a minor league town because the people feel naturally——

MR. EBBETS: You have too many colored population to start with. They are a cheap population when it gets down to paying their money at the gate.

MR. JANNEY: They come across I think, in good shape. This is perfectly futile, of course. It requires your consent and I am not going to try to convince you when you are so set in your views.

MR. EBBETS: Mr. Comiskey is right, and I do not care to butt in, only I had a piece of it. Mr. Hanlon left the town, and Mr. Vonderhorst left it and came to Brooklyn, and consolidated with us, and he said, "It is a minor league town," and what it was then it is today, and we lost money.

MR. JANNEY: Mr. Gilmore and Mr. Rasin and Mr. Sinclair will back me up that Mr. Hanlon has already got the money to back the proposition in Baltimore if it would be granted. If you are quoting Mr. Hanlon, what he says now would certainly have priority over some statement that he may have made a long time ago.

MR. EBBETS: Mr. Hanlon is now a resident of Baltimore, but he will not put a great deal of money into Baltimore as a major league proposition.

MR. JANNEY: Yes he will.

MR. LANNIN: Has Mr. Hanlon got a third base ball field that he wants to develop?

MR. JANNEY: What is that?

MR. LANNIN: Has Mr. Hanlon got a third base ball field that he wants to develop? He had two of them, one for the International League and one for the Federal League. I thought he might have a third one that he wanted to get clear of now.

MR. JANNEY: He would not need a third one because he could use this second one, which also belongs to him, but it is under option at just the same price that he could sell it for, at so much profit, as so much real estate.

CHAIRMAN HERRMANN: Well, the Baltimore representative is certainly entitled to this hearing, but it must be very evident that a condition of this kind that you seek cannot be brought about, unless the American League would do it.

MR. JOHNSON: Mr. Herrmann, will you please recall that at the conference at Philadelphia, Baltimore was awarded to the National League. (Laughter.)

CHAIRMAN HERRMANN: Can I recall it, do you say?

MR. JOHNSON: I say you must recall it.

CHAIRMAN HERRMANN: No, I do not think I was present at that time. I got in afterwards.

MR. JOHNSON: We were to have two ten-club circuits, and Baltimore was awarded to the National League, wasn't it?

PRESIDENT TENER: I think you and Mr. Ball fixed that up.

MR. JOHNSON: Along with Newark.

CHAIRMAN HERRMANN: Oh, you mean recently. I thought you meant originally.

MR. JOHNSON: Yes.

PRESIDENT TENER: And you approved of it for a little while. I did not know whether you were in earnest or not, that you would give us Baltimore and Newark, and Mr. Sinclair remembers that.

MR. SINCLAIR: Newark is a pretty good town.

MR. JOHNSON: We were to have Pittsburgh and Brooklyn, and we accepted.

MR. EBBETS: With the ten-club league.

MR. JOHNSON: You were awarded Baltimore and Newark. You were given Baltimore and Newark.

MR. SINCLAIR: Don't you think, Mr. Johnson,

that that would have been of some considerable value to the National League circuit?

MR. JOHNSON: I think so.

MR. SINCLAIR: Newark and Baltimore.

MR. JOHNSON: Oh, yes. (Laughter.)

PRESIDENT TENER: Which would be a great advantage to us,—both of them?

MR. JOHNSON: Mr. Herrman evidently forgets the recent conference when cities were awarded, and he overlooked that entirely.

CHAIRMAN HERRMANN: It was just discussed. I thought you had a reference to Baltimore originally.

MR. JOHNSON: Oh, no.

CHAIRMAN HERRMANN: When this league went in.

MR. JOHNSON: Oh no, not at all.

CHAIRMAN HERRMANN: I understand now that you refer to the Philadelphia conference. I remember that distinctly.

MR. JOHNSON: Philadelphia conference, yes. Mr. Sinclair awarded the cities at that time I think.

MR. GAFFNEY: How far have we got down in the agreement, Mr. Chairman?

CHAIRMAN HERRMANN: We have gotten all through with it. We have read it all.

MR. GILMORE: We are taking up situations which were not mentioned in the agreement.

MR. JANNEY: Is there any proposal that is suggested?

MR. JOHNSON: I think the Federal League should appoint a committee to confer with the National Commission to work out the details.

MR. MINOR: If you will pardon me, Mr. Johnson, there was one paragraph of that agreement which was deferred to wait until Mr. Janney came in, and that is all this is subject to the condition that the suit in Chicago will have to be dismissed because we will not put ourselves in the position of doing the thing in the teeth of a decision that is pending. You simply wanted to get your lawyer's opinion.

MR. JANNEY: The concurrence of attorneys on both sides, if an agreement is reached, there would be no difficulty in disposing of the suit.

MR. MINOR: It was very properly put in this agreement, and that was one of the paragraphs that was laid aside, or rather the consideration of it was deferred until you arrived. I do not want to put myself in contempt of court. That is all right, is it?

MR. GILMORE: Yes, we understand that.

CHAIRMAN HERRMANN: Mr. Johnson suggests if this agreement is approved in a tentative way, the Federal League appoint a committee of one or two, two say, to act in conjunction with the National Commission and to work out the details.

MR. GILMORE: As long as there are three on the National Commission, would not a committee of three of our be acceptable?

MR. JOHNSON: I do not think any objection could be offered to that. That is purely a matter for the Federal League gentlemen to decide, entirely.

MR. MINOR: I think they are entitled to the same number as there are of us.

MR. JANNEY: Mr. Herrmann naturally does not want it too cumbersome, but I do not think three would make any difference.

MR. MINOR: I would suggest you do not make it any larger than three.

MR. JANNEY: Oh, no, no larger. Might I suggest this. You will note there is absolutely nothing in the proposals that have been before the league with reference to Baltimore. Would it be within the purview of the National Commission to take up the question of some other method of settlement to meet the Baltimore situation it the one we have suggested is not agreeable? It would be within your authority and purview, and that matter could be taken up with the Commission direct, or would that be a matter of discussion here.

MR. MINOR: Those are all matters that would be taken up, don't you think so, Mr. Johnson?

MR. JOHNSON: Allow the Federal League to appoint a committee, and they could meet with the Commission immediately, and we can determine when we will proceed.

CHAIRMAN HERRMANN: Yes, and I am quite sure we would want to call in a committee repre-

senting the National Association, because I, for one, would be willing to lend my good offices in any way that I can to clear up this whole situation.

MR. JANNEY: That is what I felt. It is a situation that should be cleared up, and the things mentioned in the proposal that are reduced to writing—if it is in the power of the Commission to take that up with the committee, it is all right, but if it is a matter that should be discussed before you all, then we should discuss it.

MR. TOOLE: They have full power to act.

MR. JANNEY: Then that is satisfactory.

(Chairman Herrmann and Governor Tener confer.)

PRESIDENT TENER: The other position should be made clear to everybody present.

CHAIRMAN HERRMANN: Governor Tener again suggests it should be made clear, in the beginning, so far as the National League is concerned, and I believe the American League will also coincide in that, that the major league proposition is impossible at this time.

On the other hand, we are all willing to lend our good offices to arrange matters that might be satisfactory, if that could be arranged either there or elsewhere.

MR. GILMORE: That is our attitude.

CHAIRMAN HERRMANN: In doing that, we would have to consult other interest, which means

the National Association. Mr. Barrow is in the city. What is your committee, Mr. Barrow?

MR. BARROW: Mr. Farrell and myself.

MR. GILMORE: Mr. Chairman, I am prepared to name a committee to meet the National Commission. I will name Mr. Sinclair, Mr. Weeghman and myself.

CHAIRMAN HERRMANN: That is satisfactory.

MR. TOOLE: Mr. Chairman, just this one suggestion before anything is done by the National Commission or by the committee, from a legal standpoint. I suggest that the first obstacle to be removed is the action now pending, because you may get yourself in disfavor with the Court out there, if you go ahead and make even tentative arrangements without consulting the Court, so it seems to me that the first thing that should be done, and that should be done very promptly, to show that the thing is moving along, is that both sides should agree that that action be discontinued, and prompt steps should be taken to discontinue it and get it out of the way. That ought to be done before you have any meeting of the Commission with this committee.

CHAIRMAN HERRMANN: Well, I would want to discuss that with my colleagues.

MR. JANNEY: I think that should be part of the agreement ultimately reached, that that suit be discontinued. It would not certainly be any discourtesy to the Court for parties to a litigation

to discuss its composition, and when they come to a composition, then to have the dismissal of the action as a part of the composition.

MR. TOOLE: You are not settling that suit, that is the difficulty. If we were settling that litigation, that is another thing, but you are settling a multitude of things in no way involved in that, and reaching agreements on them, and this decision has been in abeyance. He may decide it tomorrow, and all this go to nothing, and put you all in a very embarrassing position, although you do not, perhaps, get into contempt of court.

CHAIRMAN HERRMANN: Is it your theory to jointly go there and ask that this case be agreed to be dismissed before you agree on details?

MR. TOOLE: The first step toward an agreement or settlement of this matter should be a discontinuance of this action.

CHAIRMAN HERRMANN: I do not agree with you.

MR. MINOR: Let me suggest this. It won't be any matter of pride or it won't be any discourtesy to the Court, in my opinion, Mr. Janney, but I do agree that the Court should be consulted first. In other words, I mean this: Your attorneys and the attorneys representing organized baseball would confer with the Judge with a view of telling him that you have this tentative agreement under way, and that you may reach an agreement. Then he is advised in advance, and there is no discourtesy on our part.

MR. JANNEY: That is very proper. I think that is a very excellent suggestion.

MR. MINOR: I do not mean that you should dismiss the suit.

MR. TOOLE: I think it should be dismissed. I think if the two parties have come together and have agreed to this tentative agreement in good faith on both sides, that this action should be summarily dismissed. That is my theory of it.

MR. MINOR: That is going to be the suggestion of the Court. Why don't you submit it?

MR. TOOLE: That is the first step towards evidence of good faith on both sides.

MR. JANNEY: I think the most that could be done, so far as I can see, would be to wire our respective counsel to appear before the Court tomorrow and advise him that there are matters under discussion which may ultimately result in an agreement, and if this agreement is effective, it will involve the discontinuance of the action before him, and suggest it would be proper for him to delay rendering a decision in it until this could be seen, whether the composition was effected, and that would be perfectly compatible with every possible legal or courteous principle.

CHAIRMAN HERRMANN: That is a matter for this joint committee to consider with the Commission.

MR. MINOR: That is a matter to consider with your respective attorneys, but I do not think any-

thing should be done until you do consult with your attorneys.

MR. JOHNSON: I agree with you absolutely.

MR. MINOR: I think the attorneys should be consulted. Whether the attorneys adopt my suggestion or the other suggestion of dismissal or not, that is for them to decide. I am not going to take that responsibility about the suit. I am not an attorney, and I do not think that we should, and I do not think that you should take the responsibility. You have an attorney representing you there. Confer with him before you do this. Everything here is predicated or conditioned upon the dismissal of this suit. In other words, what is meant by that, we do not want to put ourselves in a position where we would be held in contempt perhaps or of doing anything discourteous to the Court.

MR. JANNEY: There is certainly no contempt involved.

MR. MINOR: I do not want to put ourselves in a position where we would be perhaps criticized even. I do not know how far the Courts might consider certain things we might do as being in contempt.

MR. TOOLE: This particular Court is very jealous of its prerogatives, and has decided notions on what ought to be done, and my firm impression is that this action ought to be out of the way before you go ahead and complete this arrangement.

That is my judgment. I may be wrong about it, but that is my opinion of it.

MR. JANNEY: If that is a suggestion based upon any principle of courtesy to the Court, I do not agree with you.

MR. MINOR: Mr. Toole, do you appear of record out there in the suit?

MR. TOOLE: Only for the Boston Club.

MR. MINOR: You are in that suit then; you are one of the counsel to be consulted; also Mr. Miller.

MR. TOOLE: I am not to be consulted very seriously, because the conduct of the case is in the hands of the Commission's attorneys and they are responsible for it.

MR. MINOR: The fact of your intentions shown in this agreement, would not that cover it? Mr. Gilmore, your attorneys reside in Chicago, do they not?

MR. GILMORE: Yes, some of the attorneys reside there, and others in Indianapolis.

CHAIRMAN HERRMANN: Are you gentlemen ready to do that now, to have a joint meeting of the attorneys? We cannot have it tomorrow, but Monday in Chicago, and inform them of what we have done, and get their views, and let them present the matter to Judge Landis.

MR. GILMORE: We are prepared to do anything, Mr. Herrmann. We are acting in good faith, and we are prepared to do anything to bring about an honorable adjustment.

MR. TOOLE: I suggested to Mr. Gilmore just now that this matter has been pending in the public mind for months. There is an interview here that something was being done towards a settlement. There was a denial over there that the parties had ever been together. There was another interview tomorrow, and a denial tomorrow afternoon, and the next edition had a confirmation of the next story, and so on. You gentlemen have come from great distances, and come together here. Here is a law suit which the Federal League, if it continues in existence—(and I do not think I am stating too much)—does not matter a straw. They do not want to win it any more than organized ball wants to win it now, because they know they have cut from under their feet the only thing that will control a body of ball players, and they do not want it now. What good is it to them if they win it? They are worse off than if they lose. Why not say to the public, "We have met here in good faith. The first thing in the way is this law suit. We have definitely and positively agreed on both sides to cut it off. There is a definite thing that has been done. The rest of the details we are going to settle," and then you have cut off a useless appendage here, and convinced the public that both sides are in good faith. You have focused attention on a partially completed thing, and the details of it you could work out in the next three months.

MR. JOHNSON: I would not have any thought of

working it out in the next two or three months, Mr. Toole. I believe it ought to be worked out next week. I do not believe in any hurry in this matter. Every one wants to understand where they stand, and just as soon as we have that court decision, I am in favor of the committees getting together immediately, and shaping up the conditions.

MR. TOOLE: I only suggest two or three months. I mean at your leisure after that, at your convenience.

MR. JOHNSON: I think the sooner it is settled, the better for the interests of all the parties. I am prepared, and I know Mr. Herrmann and Governor Tener are of the same mind, we will agree to meet immediately, if it does not interfere with your Christmas arrangements.

GOVERNOR TENER: Not mine. I am not far from here.

MR. JOHNSON: How do you know we will meet in New York?

GOVERNOR TENER: I am at home at either place.

MR. JANNEY: This is an essential part of the settlement. This suit and everything else is a part of the settlement. I do not think that you would suggest that there is any discourtesy to the Court in two litigants, who have something before the Court pending, to compose their differences, and inform the Court of it. This will result in the composition of that difference, but why in the world

should we be held up while the attorneys consult in Chicago, in carrying out the matter which you gentlemen are here to carry out and we are here to carry out?

Let that be done, and we, in good faith, are here for the purpose of signing and fixing up and concluding peace, which will involve the dismissal and disposal of that case. Do not let us get apart and put off for any period of time, while attorneys talk out in Chicago and elsewhere with the Court about what they are doing. That can be arranged to the satisfaction of the Court, and I am sure Judge Landis would be only too glad to know that the matter is under consideration for adjustment, so there would be no discourtesy. This is part and parcel of the agreement. We do not do things in part. This is one, whole composition. Let us do it altogether and complete it and do it while we are together, instead of waiting for two weeks or three weeks.

CHAIRMAN HERRMANN: Mr. Johnson is also of that opinion, to do it right away. I am ready at any time. As I understand it, the first thing to do is to have the attorneys go into court Monday morning, if you please.

MR. JANNEY: But that is part of the whole agreement, Mr. Herrmann, that is part of the whole composition.

MR. JOHNSON: Won't we receive an immediate decision from Landis?

MR. JANNEY: I beg your pardon?

CHAIRMAN HERRMANN: Dismissal.

MR. JANNEY: Oh, he would not have anything to do with it. You can go in and file an agreement for the withdrawal of the suit, telling him you are withdrawing it.

MR. JOHNSON: I am quite sure that he would give the attorneys an immediate hearing on a matter of that sort.

MR. JANNEY: It does not require any hearing.

MR. MINOR: I want to put that up to the attorneys, and let them decide it, whether they will dismiss it or do the other; but I agree with Mr. Toole that in view of the publicity given to this matter and in view of the character of the man we are dealing with, the Judge I mean—he is very jealous of his powers and prerogatives, and I do not think we should infringe on them. I agree with Mr. Janney, of course, that litigants have a right to get together and agree to settle a case, but this is out of the ordinary. It is a charge of conspiracy and violation of the Anti-Trust Law, and all that business, and a violation of a good many Federal statutes. It is that, in effect. It is a little more than an ordinary suit, and I agree with Mr. Toole that we should not take any steps of a definite character. We are doing it all subject, of course —I agree with you it is part of the composition, but we should not take any steps, at least until we

have acquainted the Court with the fact that this matter is up for settlement.

MR. JANNEY: Then let us take up the other steps and conclude them, and subject to the dismissal of that suit.

MR. TOOLE: Here is the situation. It is commonly assumed in all these negotiations that Mr. Sinclair or Mr. Weeghman or somebody else than the two gentlemen mentioned are going to buy a certain ball club in organized ball, and with that law suit in which organized ball and the methods by which it is conducted, and on the record in which they charge that the methods of organized ball, of which they are to become an integral part, that that is a criminal conspiracy in effect, and yet they ask that that remain on the record, while negotiations, in good faith, are going on to get them into that conspiracy. It is the most absurd proposition I ever heard of. They want to buy in. From becoming plaintiffs in a conspiracy, and complainants, they want to buy in as a defendant, and still they do not want to wipe the record clean before they come in.

MR. JANNEY: So far as that is concerned, that is not a criminal attack.

MR. MINOR: You charge us with conspiracy and violation of the Sherman Anti-Trust Law; now, that is a criminal offense.

MR. JANNEY: What we do here will be subject to the dismissal. It is not usual to dismiss the case

and then compose it. You compose it and then dismiss it.

MR. MINOR: I do not go that far, but I do say we owe it to our attorneys who represent the respective parties, that they should be consulted. If they should be of that opinion, it would be all right. Then our skirts are clear. I am not acting as attorney there. I have counsel; so have you. And I do not propose to infringe the attorneys' prerogative. I am a defendant, and as such defendant I am relying upon that counsel. Now, I am not going to do anything to infringe his prerogatives, nor am I going to do anything to put myself in the position of being discourteous to the Court.

MR. JANNEY: You have already done that. You have already sat here and made an agreement which involves a dismissal of that suit. Continue it and complete its details and let it still be subject to the dismissal of that suit, and when completed go there and dismiss the suit. You do not dismiss your suit and then agree how to settle it. That is the whole settlement. You settle this thing, and then, with your settlement, go and dismiss it. I have no objection, of course, to notifying the attorneys and telling them to do everything that is necessary to be courteous and pleasing to the Court. There is no difficulty about that, but in the meantime we should go ahead.

MR. GILMORE: I cannot see—we have arranged certain details regarding this settlement, if there is to be one, and I do not see that it would affect

it very much if we arranged several more details before we took up this matter. We have done part of the work. Why not finish it? If you are in contempt then, you certainly are now, so far as I can see it.

MR. TOOLE: There is as yet, Mr. Chairman, no one definite, specific fact that you can state to the public as having been agreed upon between Organized Ball and the Federal League. There is not a thing you can put your finger on yet that is enforcible as a matter of settlement or agreement between you. Now, why not do something to show that the thing is in good faith and is going to go, and wipe this thing out.

MR. SINCLAIR: Do you think we want to sign a check in blank?

MR. TOOLE: No.

MR. SINCLAIR: You are asking us to do that. We will continue in a tentative way to arrange all the details.

MR. GILMORE: And before they are finally concluded——

MR. SINCLAIR: Before they are finally concluded, you can dismiss the suit, but we have only done part of the thing now.

MR. TOOLE: If you were settling the action, that would undoubtedly be true. You would want to keep it formally open, but you are not settling your action. You are settling all the differences between the two sides.

MR. SINCLAIR: We have not settled them yet.

MR. TOOLE: They are not involved at all in that action. All that is involved in that action is the method of doing baseball business, and that is not involved in this settlement at all.

MR. SINCLAIR: We have not concluded the settlement.

MR. TOOLE: You have come to that agreement.

MR. JANNEY: It is not agreed yet. The matter has not been made definite.

MR. TOOLE: Then it is no good to anybody.

MR. JANNEY: We have a different view of it. Suppose we would not be able to get together in this matter?

MR. TOOLE: I do not think you would suffer any by it anyway.

MR. JANNEY: We think differently about that.

MR. SINCLAIR: Entirely different about that.

PRESIDENT TENER: Speaking from a layman's poin of view altogether, and having in mind what our attorneys have told us from time to time, it seems to me the proper time to have decided whether or not we would acquaint the Court with this thing was in its inception; that is, when it was first proposed, and before anything was done, that we might have gone to the Court and asked him if an arrangement could be made between the contending parties in the suit looking to a settlement, would it be satisfactory to the Court to have it withdrawn? That is, before anything was done.

Now, when we enter into it, we are doing something perhaps that we should not. You lawyers know that, without having that permission, and since we have entered into it, that might offend the Court, and wouldn't it be better, as Mr. Toole says now, to have the case dismissed rather than take the chance of offending the Court or perhaps getting a decision now which none of us would want, and even though a decision did come down now, it would not do either of us a bit of good, whether we were together or apart.

MR. JANNEY: The view of the gentlemen here is that the case could not be dismissed except as a part of the agreement. I think that is the unanimous view.

CHAIRMAN HERRMANN: The Governor makes the point, simply to inform the Court there may be such a thing done, and then if you do not get together, then the matter remains in *statu quo,* is that correct?

PRESIDENT TENER: Yes, but that we should have done this before we proceeded as far as this.

MR. JANNEY: Well, we have proceeded now.

PRESIDENT TENER: And that may constitute an offense.

MR. JANNEY: That is perfectly satisfactory to us. We will acquaint the attorneys on our side with the situation, and tell them, if they feel inclined, to inform the Court of the fact we are in negotiation looking to a settlement, and take such

action as they think is proper and courteous to the Court. That is as far as we can go at this time.

(Mr. B. B. Johnson confers with President Tener.)

MR. JOHNSON: We will have Mr. Toole prepare a telegram and send it to Mr. Miller tonight or tomorrow.

(President Tener confers with Mr. Toole.)

CHAIRMAN HERRMANN: In view of the fact that the newspaper men have waited to get the result of this meeting, and what has occurred, we have agreed, gentlemen, and I make this suggestion before any of you leave the room that it is quite natural the newspaper men will want to know what has been done, and what the result of this meeting has been, and we have authorized Mr. Heydler to speak for all of us and to give out, in substance, what he have done this evening. If any newspaper man comes to me, I will simply say, "See Mr. Heydler, and he will give you the result of the meeting." Now, in a general way, what are you going to say, Mr. Heydler?

SECRETARY HEYDLER: I am not going to say a thing about anything that has been agreed upon, for the very reason you cannot agree on anything. You are going to the Court, and apparently——

MR. LLOYD: Are you going to tell them that?

MR. HEYDLER: Yes, sir.

MR. SINCLAIR: When are we going to the court? That is what I do not understand about this situa-

tion and what are you going to the court about? You stop in the middle of negotiations to go to the court to dismiss the suit. We are not going to dismiss the suit until we know what we are going to do.

PRESIDENT TENER: That is thoroughly understood. You are going to the Court as a matter of courtesy, to see, if we agree here, or come to an understanding, is it satisfactory to the Court to withdraw the suit?

MR. SINCLAIR: That is perfectly all right.

MR. HERRMANN: And tomorrow we will discuss some of these details.

PRESIDENT TENER: So the Judge does not learn of this outside and say that he was never consulted.

MR. JOHNSON: I move we adjourn until tomorrow morning at ten o'clock.

(Motion seconded.)

CHAIRMAN HERRMANN: It is moved and seconded that we now adjourn to meet here tomorrow morning at ten o'clock. All in favor say "Aye;" contrary? It is so ordered, and we will now stand adjourned until ten o'clock tomorrow morning. I want our Stenographer to be present there.

WHEREUPON an adjournment was taken until 10 o'clock A. M. of the following day, Saturday, December 18, 1915.

At the conclusion of the meeting, Mr. Toole drew up the following telegram, adressed to George

W. Miller, Attorney, First National Bank Building, Chicago, Illinois:

> "Negotiations are pending which if carried out will result in an agreement to withdraw the action brought by the Federal League. Please bring the matter to the attention of Judge Landis, if you think it advisable, and secure his approval of situation. Communicate with attorneys for Federal League, who will be advised by their client. Wire answer immediately care of August Herrmann, Waldorf-Astoria Hotel, New York City.
>
> (Signed) B. B. JOHNSON."

(Note: At the joint conference between the National Commission and the Federal League rpresentatives held Saturday morning, December 18, 1915, Mr. Sinclair objected to having the discussion reported by the Stenographer. Therefore, no record was made of this conference by the Stenographer.)

# FEDERAL BASEBALL CLUB OF BALTIMORE, INC. *v.* NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS, ET AL.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 204. Argued April 19, 1922.—Decided May 29, 1922.

1. The business of providing public baseball games for profit between clubs of professional baseball players in a league and between clubs of rival leagues, although necessarily involving the constantly repeated traveling of the players from one State to another, provided for, controlled and disciplined by the organizations employing them, is not interstate commerce. P. 208.
2. *Held* that an action for triple damages under the Anti-Trust Acts could not be maintained by a baseball club against baseball leagues and their constituent clubs, joined with individuals, for an alleged conspiracy to monopolize the baseball business resulting injuriously to the plaintiff. P. 209.

269 Fed. 681; 50 App. D. C. 165, affirmed.

ERROR to a judgment of the Court of Appeals of the District of Columbia reversing a judgment for triple damages under the Anti-Trust Acts recovered by the

plaintiff in error in the Supreme Court of the District and directing that judgment be entered for the defendants.

*Mr. Charles A. Douglas* and *Mr. William L. Marbury*, with whom *Mr. L. Edwin Goldman* and *Mr. William L. Rawls* were on the briefs, for plaintiff in error.

Defendants are voluntary associations and corporations engaged upon a vast scale, involving the investment of millions of dollars, in the business of providing, by the transportation from State to State of baseball teams and their necessary attendants and equipment, exhibitions of professional baseball. The court is not concerned with whether the mere playing of baseball, that is the act of the individual player, upon a baseball field in a particular city, is by itself interstate commerce. That act, it is true, is related to the business of the defendants, but it can no more be said to be the business than can any other single act in any other business forming a part of interstate commerce.

The question with which the court is here concerned is whether the business in which the defendants were engaged when the wrongs complained of occurred, taken as an entirety, was interstate commerce, or more accurately, whether the monopoly which they had established or attempted to establish was a monopoly of any part of interstate commerce.

At the foundation of the business of one of these leagues—in its primary conception—is a circuit embracing seven different States. No single club in that circuit could operate without the other members of the circuit, and accordingly in the very beginning of its business the matter of interstate relationship is not only important but predominant and indispensable.

Each game symbolizes a contest of skill between the two cities that have been brought together by means of interstate communication and travel. Each team of each

club in the league carries with it, and it is essential to the profit of the enterprise that it should carry with it, its representative character; it symbolizes the great city that it represents to those assembled to witness the contest.

In addition to this representative city and state aspect, there is also the element of intersectional rivalry. Experience has shown that the game is most largely patronized when clubs are so located as to provide a contest for supremacy between the Eastern and Western sections of the country.

It is necessary to distinguish between baseball as a sport, that is, where it is played merely as a means of physical exercise and diversion, and this business of providing exhibitions of professional baseball. The business of Organized Baseball represents and has represented for many years, an investment of colossal wealth. Defendants who dominate Organized Baseball are not engaged in a sport. They are engaged in a money-making business enterprise in which all of the features of any large commercial undertaking are to be found. When the teams of the National or American Leagues or of any other league are sent around the circuit of the league, they go at the direction of employers whose business it is to send them, and whose profits are made as a result of that business operation.

When the profit-making aspect of the business is examined, it will be found that the interstate element is still further magnified. The vast investment of capital which has been made in it is required, among other things, in order to provide a place at which the teams in the league may play their contests. Each club has a ball park, with stands erected upon them, sometimes, as in the case of a major league club, costing several millions of dollars. Every club in the league earns its profit not only by the drawing capacity of its team at home, but also by that of the teams of the clubs which its team

visits in the various cities in the league. The gate receipts in all of the cities in which the clubs are located are divided according to a definite proportion, fixed by agreement between the club of the city in which the game is played and the club employing the visiting team.

In no other business that can now be recalled is there such a close interrelationship and interdependence between persons in one State and persons in another. The personality, so to speak, of each club in a league is actually projected over state lines and becomes mingled with that of the clubs in all the other States. The continuous interstate activity of each is essential to all the others. The clubs of each league constitute a business unit embracing territorially a number of different States. While each club has, of course, a local legal *habitat*, yet from a practical business standpoint it is primarily an ambulatory organization.

It is difficult to perceive the relevancy of any discussion about an article of commerce in this case. Commerce may be carried on in one of its forms by traffic in articles of merchandise, but there are countless forms in which it may be carried on without traffic in such articles. *Gibbons* v. *Ogden*, 9 Wheat. 189.

It is also difficult to discern the relevancy of the contention that personal effort is not an article of commerce. Personal effort, while it may not be an article of commerce, is often commerce itself, but we are not concerned with any such question here. It may be passed by saying that it has been adjudicated by this court in the *Hoke Case*, 227 U. S. 308, that interstate commerce may be created by the mere act of a person in allowing himself to be transported from one State to another, without any personal effort; and further that it is very difficult to see how *International Textbook Co.* v. *Pigg*, 217 U. S. 91, could have been decided as it was, except upon the

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principle that the mere exchange of instruction and information, which is about as purely a matter of personal effort as anything that can be imagined, may be a subject of interstate commerce.

If transactions in interstate commerce were to be judged by their isolated ultimate results, as the defendants seek to separate the act of a player in throwing a ball upon a ball field from all the steps which are taken to bring the ball player in the due course of business from other States, of course their interstate character could be plausibly argued away. By such a process of reasoning the American Tobacco Company, for instance, might have removed its gigantic monopoly from the operation of the Sherman Act. See *United States* v. *American Tobacco Co.*, 221 U. S. 106, 184; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 68; *Swift & Co.* v. *United States*, 196 U. S. 375.

In the business now under consideration throughout the playing season the ball teams, their attendants and paraphernalia, are in constant revolution around a preestablished circuit. Their movement is only interrupted to the extent of permitting exhibitions of baseball to be given in the various cities. When exhibitions in one city are completed the clubs resume, according to the agreement made, and plan of business long established, their course of travel on to another city, and thus on and on until the schedule of exhibitions is completed. The interruption in interstate movement is nothing like as great as that in the *Swift Case, supra.* The constant movement of the teams from State to State during a period of over five months each year, is under a single direction and control and in pursuance of one object.

See *Champion* v. *Ames*, 188 U. S. 321; *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1; *United States* v. *Patten*, 226 U. S. 525; *Loewe* v. *Lawlor*, 208 U. S. 274; *Western Union Telegraph Co.* v. *Foster*,

247 U. S. 105. See particularly *Marienelli* v. *United Booking Offices,* 227 Fed. 165, where the question was presented as to whether a company engaged in booking vaudeville performers for a circuit embracing theatres in cities in different States was engaged in interstate commerce within the Sherman Act. Also, *Motion Picture Patents Co.* v. *Universal Film Mfg. Co.,* 235 Fed. 401.

It is common knowledge that baseball is the preëminent American sport. Millions of people follow the daily reports of the results of the games in the press, and in the large cities gather in the afternoons around the newspaper offices to see the bulletin reports of the scores. Not only so, but vast numbers of people travel from one city to another for the purpose of witnessing the games. Telegraph facilities are installed at all the ball parks in the Major Leagues, and in those of the more important Minor Leagues, where reports of the games are sent out and are received throughout the country.

Each league contracts for a uniform type of baseball, which is used in tremendous numbers and shipped by the manufacturer from time to time as they are needed by the various clubs.

These incidents, while in themselves not determinative of the question of whether or not the business is interstate in character, yet, when considered in connection with its main features, emphasize the truth of what has before been said, that there is scarcely any business which can be named in which the element of interstate commerce is as predominant as that in which defendants are engaged.

The agreement and combination entered into and maintained by defendants whereby the entire business in the United States of providing exhibitions of professional baseball was brought under the control of defendants and their confederates in Organized Baseball, amounted in law to a conspiracy in restraint of trade

among the several States and a monopoly or an attempt to monopolize a part of commerce among the several States within the meaning of the Sherman Act.

There is no testimony in this case legally sufficient to show that the plaintiff has waived its right to recover damages under the Sherman Act.

*Mr. George Wharton Pepper*, with whom *Mr. Benjamin S. Minor* and *Mr. Samuel M. Clement, Jr.*, were on the brief, for defendants in error.

Organized Baseball is not interstate commerce and does not constitute an attempt to monopolize within the Sherman Act.

Personal effort, not related to production, is not a subject of commerce; and the attempt to secure all the skilled service needed for professional baseball contests is not an attempt to monopolize commerce or any part of it. Clayton Act, § 6; *Paul* v. *Virginia*, 8 Wall. 168; *Hooper* v. *California*, 155 U. S. 648; *Metropolitan Opera Co.* v. *Hammerstein*, 147 N. Y. S. 532; *In re Duff*, 4 Fed. 519; *In re Oriental Society*, 104 Fed. 975; *People* v. *Klaw*, 106 N. Y. S. 341. The Department of Justice has ruled that the business conducted by Organized Baseball was not in violation of the Sherman Act; and also that the business of presenting theatrical entertainments is not commerce. Distinguishing: *International Textbook Co.* v. *Pigg*, 217 U. S. 91; and *Marienelli* v. *United Booking Offices*, 227 Fed. 165. The only case in which the question whether Organized Baseball is within the Sherman Act has been directly passed upon is that of *American Baseball Club of Chicago* v. *Chase*, 149 N. Y. S. 6, in which the court answered the question in the negative.

Congress has not imposed a penalty upon the transportation of players for baseball purposes, and therefore *Hoke* v. *United States*, 227 U. S. 308, is not in point. While Congress may regulate the movement of persons in

interstate commerce, when it has not regulated movement as such, the doing of an act essentially local is not converted into an interstate act merely because people came from another State to do it.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit for threefold damages brought by the plaintiff in error under the Anti-Trust Acts of July 2, 1890, c. 647, § 7, 26 Stat. 209, 210, and of October 15, 1914, c. 323, § 4, 38 Stat. 730, 731. The defendants are The National League of Professional Base Ball Clubs and The American League of Professional Base Ball Clubs, unincorporated associations, composed respectively of groups of eight incorporated base ball clubs, joined as defendants; the presidents of the two Leagues and a third person, constituting what is known as the National Commission, having considerable powers in carrying out an agreement between the two Leagues; and three other persons having powers in the Federal League of Professional Base Ball Clubs, the relation of which to this case will be explained. It is alleged that these defendants conspired to monopolize the base ball business, the means adopted being set forth with a detail which, in the view that we take, it is unnecessary to repeat.

The plaintiff is a base ball club incorporated in Maryland, and with seven other corporations was a member of the Federal League of Professional Base Ball Clubs, a corporation under the laws of Indiana, that attempted to compete with the combined defendants. It alleges that the defendants destroyed the Federal League by buying up some of the constituent clubs and in one way or another inducing all those clubs except the plaintiff to leave their League, and that the three persons connected with the Federal League and named as defendants, one of them being the President of the League, took part in the conspiracy. Great damage to the plaintiff is alleged. The

plaintiff obtained a verdict for $80,000 in the Supreme Court and a judgment for treble the amount was entered, but the Court of Appeals, after an elaborate discussion, held that the defendants were not within the Sherman Act. The appellee, the plaintiff, elected to stand on the record in order to bring the case to this Court at once, and thereupon judgment was ordered for the defendants. 50 App. D. C. 165; 269 Fed. 681, 688. It is not argued that the plaintiff waived any rights by its course. *Thomsen* v. *Cayser*, 243 U. S. 66.

The decision of the Court of Appeals went to the root of the case and if correct makes it unnecessary to consider other serious difficulties in the way of the plaintiff's recovery. A summary statement of the nature of the business involved will be enough to present the point. The clubs composing the Leagues are in different cities and for the most part in different States. The end of the elaborate organizations and sub-organizations that are described in the pleadings and evidence is that these clubs shall play against one another in public exhibitions for money, one or the other club crossing a state line in order to make the meeting possible. When as the result of these contests one club has won the pennant of its League and another club has won the pennant of the other League, there is a final competition for the world's championship between these two. Of course the scheme requires constantly repeated travelling on the part of the clubs, which is provided for, controlled and disciplined by the organizations, and this it is said means commerce among the States. But we are of opinion that the Court of Appeals was right.

The business is giving exhibitions of base ball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in or-

der to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. According to the distinction insisted upon in *Hooper* v. *California*, 155 U. S. 648, 655, the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce. That which in its consummation is not commerce does not become commerce among the States because the transportation that we have mentioned takes place. To repeat the illustrations given by the Court below, a firm of lawyers sending out a member to argue a case, or the Chautauqua lecture bureau sending out lecturers, does not engage in such commerce because the lawyer or lecturer goes to another State.

If we are right the plaintiff's business is to be described in the same way and the restrictions by contract that prevented the plaintiff from getting players to break their bargains and the other conduct charged against the defendants were not an interference with commerce among the States.

*Judgment affirmed.*